

STATE OF HAWAI'I  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Aquatic Resources  
Honolulu, Hawai'i 96813

November 10, 2011

Board of Land and Natural Resources  
State of Hawai'i  
Honolulu, Hawai'i

**SUBJECT:** Enforcement Action against Maka Kai Charters, Inc. for Injuring  
Coral within the Molokini Shoal Marine Life Conservation District

**SUMMARY:** This submittal requests the Board to find that Maka Kai Charters, Inc.  
violated Hawai'i Revised Statutes Chapter 190, Hawai'i  
Administrative Rules Title 13, Chapter 31, and its Marine Life  
Conservation District Use Permit for Commercial Activities in the  
Molokini Shoal Marine Life Conservation District (permit #22) by  
injuring approximately 121 specimens of stony coral within the  
Molokini Shoal Marine Life Conservation District, and recommends  
that the Board impose a \$18,000 fine to be used for coral reef  
educational materials and programs.

**DATE OF  
INCIDENT:** August 13, 2008

**AGAINST:** Maka Kai Charters, Inc.  
PO Box 1119  
Lahaina, HI 96761

**LOCATION OF  
INCIDENT:** Molokini Shoal Marine Life Conservation District, Maui County,  
Hawai'i

## I. INTRODUCTION

On August 13, 2008, a 49-passenger catamaran sailboat owned and operated by Maka Kai Charters, Inc. ("Maka Kai"), ran aground as it attempted to enter the inner waters of Molokini Islet. The vessel's rudders dragged across a section of shallow reef, breaking living coral, and impacted the coral reef again as the vessel was towed to a nearby day-use mooring. In all approximately 121 coral colonies were harmed as a result of the grounding.

DAR recommends that the Board of Land & Natural Resources ("Board") approve the proposed settlement agreement with Maka Kai, and authorize the Chairperson to use the proceeds of the settlement for educational purposes. Should the Board accept DAR's recommendation, Maka Kai agrees to waive its rights to contest the essential facts, accept legal liability for the grounding, and pay a fine reflecting the impact on the marine environment and its culpability as owner of the vessel.

Molokini Shoal Marine Life Conservation District ("Molokini MLC" or "Molokini") was established by the Department of Land and Natural Resources ("DLNR") in 1977. It encompasses the crescent-shaped rim of an extinct volcanic crater, Molokini Islet<sup>1</sup>, and includes the surrounding navigable ocean waters out to a distance of 100 yards. As a Marine Life Conservation District, Molokini is afforded vigorous protection under state law. These regulations include specific prohibitions on the injuring or killing of any marine life such as live coral, as well as the taking, altering, defacing, destroying, possessing, or removing of any coral. HAR § 13-31-3.

Molokini is a popular commercial snorkel and SCUBA destination, well known for abundant coral beds, exceptional water clarity, and tame fish populations. In 1995, the Division of Aquatic Resources ("DAR") began issuing Marine Life Conservation District Commercial Use Permits for vessels wishing to offer excursions to Molokini. DAR has since issued 42 such permits, including two to vessels operated by Maka Kai Charters. The islet may also be visited by non-commercial vessels. Private boaters have priority for approximately four of the twenty-six day use moorings available within the crater. HAR § 13-257-52. DAR estimates that on any given day the crater may be navigated by upwards of 25 commercial vessels that range in length from 25 to 90 feet.

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<sup>1</sup> Molokini Islet was traditionally believed to be the head of Pu'uoinaina, a mo'o that was slain by the goddess Pele after her dream lover, Lohi'au, took Pu'uoinaina as his wife. <http://www.wehewehe.org/gsd12.5/cgi-bin/hdict?a=q&r=1&hs=1&e=q-0hdict--00-0-0--010---4---den--0-000lpm--1haw-Zz-1---Zz-1-home---00031-0000escapewin-00&q=molokini&j=pp&hddid=0&hdds=0>. Archaeological evidence indicates that this site was visited by ancient Hawaiians for fishing and gathering purposes. During and after World War II, the offshore islet was later used as a target for military testing by the U.S. Navy. Offshore Islet Restoration Committee, <http://www.hawaiiirc.org/OIRC-ISLETS-Maui/OIRC-ISLETS-Maui-Molokini.htm> (last visited Sept. 20, 2011). As a safety measure, the U.S. Navy engaged in on-site detonation of unexploded ordinance from such testing in 1975 and 1984; however, public outcry over the resulting environmental damage to this unique site led to the manual removal of all remaining ordinance by volunteer dive groups. *Id*

When corals are harmed, an entire ecosystem suffers a loss of their habitat services. The extent of loss and the time for recovery in a given case will vary depending on numerous factors, factors DAR staff has carefully weighed in recommending the proposed settlement below. DAR staff also considered Maka Kai's blemish-free record both before and in the years since the incident, and the actions it took to mitigate the ecological impacts of the grounding. These measures included facilitating immediate contact with the Division of Conservation & Resources Enforcement ("DOCARE") as well as the United States Coast Guard ("USCG"), cooperating with these agencies' investigation of the incident, and relieving the responsible employee of his duties as captain for six months. Based on these considerations, DAR staff recommends an administrative fine of \$18,000 to be levied against Maka Kai, to be dedicated to coral reef outreach and educational projects.

## **II. FACTUAL BACKGROUND**

In consideration of the settlement terms recommended by DAR, Maka Kai agrees to the following facts, and will decline to contest legal liability for the acts of its employees leading to the grounding of its vessel, the *Trilogy II*:

### **A. Maka Kai Charters, Inc. and command and control of *Trilogy II***

Maka Kai was among the earliest commercial tour operations to offer excursions to Molokini. The venture began in the early 1970s as Ocean Activities Center, and was formally incorporated in 1985 following which it received commercial permits for two tour boats operating from Maalaea Small Boat Harbor on Maui. Throughout this history, Molokini has been the centerpiece of its operations.

*Trilogy II*, a 55 foot, 49-passenger catamaran, was one of two Maka Kai vessels holding a Molokini MLCD Commercial Use Permit at the time of this incident. Operation of the vessel was under management of Coon Brothers, Inc., then a co-owner of Maka Kai. In command of *Trilogy II* on August 13 was Lawrence Lee.

Capt. Lee was 53 years old at the time. He joined the Coon Bros. family of companies as a full-time employee in March 2004. This followed a career in electronics including computer system management and network engineering. He worked first as a deckhand and was promoted to boat captain upon being licensed as a U.S. Merchant Marine Officer in May 2007. Captain Lee was considered a mature and risk-averse employee, and until the incident had an exemplary employment record. However, given the seriousness of the grounding he was suspended as a vessel captain for six months. There is no evidence that Maka Kai or its owners were complicit in the course chosen by Captain Lee or his failure to exercise greater caution in attempting to enter the crater.

### **B. The August 13, 2008 incident**

On August 13, 2008, the *Trilogy II* departed Maalaea Harbor with 31 passengers for a morning visit to Molokini. Normally, Captain Lee would steer a direct course through the northerly entrance of the crater. On this occasion, Captain Lee chose to deviate from his normal route and steer an east-west course around the steep back or "face" of the crater rim. He took this alternate route to provide passengers with an

educational tour of the islet.<sup>2</sup> The ocean depth along the back of the crater rim is deep, well over 100 feet, and free of obstruction. The vessel's depth sounder confirmed a water depth of more than 100 feet as he turned the vessel to round the shallow coral reef area known as "Reef's End." However, without the cues provided by vessels normally anchored within the crater, Captain Lee misjudged his position, turned too sharply, and drove the vessel onto the shallow coral reef.

At the moment of impact, Captain Lee was standing at one of the vessel's two helms. The helms were located in a partially enclosed cockpit near the stern of the 55 foot vessel. The helm area was open to passengers. Captain Lee was assisted by another captain who was stationed near the bow in order to ensure an unobstructed view forward and into the water, but Captain Lee heard no warning of the approaching reef. On impact he disengaged the vessel's transmissions, but strong ocean currents pushed the vessel into shallower water. Within minutes the vessel *Seafire II* arrived at Molokini and responded to Captain Lee's request for assistance. *Seafire II* took a line from *Trilogy II* and commenced towing the vessel to the deeper waters within the crater, where the permanent day use moorings are located. Before reaching the inner crater, however, the vessel's rudders made additional contact with the coral reef.<sup>3</sup>

Captain Lee secured the vessel to a day use mooring and proceeded to assess the extent to which it had been damaged. He found damage to the leading edges of both rudders, and seepage of seawater in the compartment behind the port rudder room.<sup>4</sup> Captain Lee immediately contacted the USCG and notified Maka Kai management of the situation. With verbal authorization from the USCG, Captain Lee then transferred *Trilogy II*'s passengers to *Mahana Nai'a*. There were no injuries. By approximately 11:55 A.M., Captain Lee had returned *Trilogy II* to Maalaea harbor.

Captain Lee cited several factors for his failure to judge the location of the reef. First, he reported that as he was approaching Molokini, the vessel's depth sounder read 154 feet but only a few moments later the vessel was in shallow water. Second, he usually used dive boats moored at "Reef's End" to gauge his position, but on that day no dive boats were present. Third, *Trilogy II* was not equipped with a GPS system.<sup>5</sup> Fourth, a strong current was pushing the vessel toward the reef. Lastly, Captain Lee cited the lack of a clear view forward of the helm station, and co-captain Ryan Hall's failure to warn of the approaching reef.<sup>6</sup>

A preliminary field assessment conducted by DAR staff on August 18 and 22, 2008, revealed two parallel scar lines in the vicinity of the reported grounding. Paint and apparent rudder fragments were found along the scar lines, and transect lines were used to measure the length and width of the damaged area. DAR staff also completed a Habitat Damage Assessment on October 8, 2008, to perform a more comprehensive analysis of the coral reef damage. As detailed below, these assessments revealed approximately 9.14 square meters of damaged area, containing an estimated 121 damaged coral colonies of medium- and low- ecosystem value.

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<sup>2</sup> Exhibit A at 4.

<sup>3</sup> Exhibit A at 3.

<sup>4</sup> Exhibit A at 3.

<sup>5</sup> GPS systems are now required on all commercial vessels permitted to operate within the MLCD.

<sup>6</sup> Exhibit A at 4-5.

Due to high wave energy in the impacted area, and the relatively small size of the coral colonies impacted, DAR staff predicts that this damaged coral area should recover relatively quickly.<sup>7</sup>

### C. Ecological assessments of habitat damage

On August 14, 2008, Maui DAR staff conducted an initial investigation to assess any habitat damage caused by the grounding of the *Trilogy II*.<sup>8</sup> Staff photo-documented the damage, and used transect lines to measure the approximate length and width of the damaged areas. Staff did not perform a full assessment due to difficult diving conditions, but determined that the damage was “substantial” and warranted a full follow-up survey when conditions were better. GPS waypoints for the damaged area were taken in anticipation of the follow-up survey.<sup>9</sup>

The preliminary assessment resumed on August 22, 2008.<sup>10</sup> Two separate hull scars 8 meters apart were documented. The northern scar included the major damage extending 6.65 meters and an area of coral fragments and rubble for an additional 2.55 meters. At the widest point, this scar was slightly over 1 meter in width. The Southern damage scar extended for 5.8 meters and was 0.7 meters wide at its widest point. There was also another area 1.8 meters long that was located on the northeastern edge of the main damage scar. This additional damage scar likely occurred when the boat began to float free from the initial grounding. Careful measurement of the directly damaged reef placed the impacted area at 9.14 square meters.<sup>11</sup>

### D. Habitat Damage Quantification

On October 8, 2008, DAR staff returned to the impact site to conduct a full Habitat Damage Assessment.<sup>12</sup> A total of 8 transect surveys were taken, with 6 uniform “control” surveys taken on the undisturbed reef immediately surrounding the damaged area, and 2 surveys taken directly on the damaged area. For consistency, each control transect survey encompassed an area seven meters long by half a meter wide. The transects allowed staff to estimate the percentage of live coral cover per area, as well as methodically document the number, size, and type of live coral colonies along each transect. This approach allowed staff to “reconstruct” the damaged areas, and determine the number and types of coral colonies most likely to have been damaged by *Trilogy II*.<sup>13</sup>

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<sup>7</sup> The DAR staff estimate for coral recovery includes data from Habitat Equivalency Analyses for similar areas located in the Main Hawaiian Islands. Assuming full recruitment of corals for the first year, and that full recovery will be represented by a 20 cm diameter *P. meandrina* coral colony (a representative size of coral colonies in this area), full recovery time is estimated at approximately 10 years. In comparison, recovery of coral colonies 30 cm in diameter may take upwards of 16 years, or over 20 years for coral colonies of 40 cm.

<sup>8</sup> See John Mitchell, Darla White, Skippy Hau, Preliminary Assessment Report *Trilogy II*/Molokini Reef Damage (Aug. 14, 2008) (“Exhibit F”)

<sup>9</sup> Exhibit F.

<sup>10</sup> See Russell Sparks, DAR, *Trilogy II* Molokini MLCD Grounding Habitat Damage Assessment August 2008 (October 8, 2008) (“Exhibit G”)

<sup>11</sup> Exhibit G at 3.

<sup>12</sup> Exhibit G.

<sup>13</sup> Exhibit G at 4.

The Habitat Damage Assessment found an average of 40% live coral cover in the undamaged surrounding area, with five coral species represented in a moderate level of reef structure. Due to the relative low levels of coral diversity, ground cover, and size complexity, DAR staff determined that the coral reef in this location represented on average a medium-level ecosystem value.<sup>14</sup> Specimen data from the control transects also indicated an average coral colony density of 38 colonies per square meter, with a one-tailed 90% confidence interval calculated on the total coral numbers, as well as on each of the coral ecological value groups (i.e. medium ecosystem value corals comprised of branching coral colonies between 20 cm and 80 cm, and low ecosystem value corals comprised of encrusting coral, or coral colonies less than 20 cm in size). Based on the 90% confidence level, the average coral colony density was applied to the damaged area of 9.14 meters to provide a conservative estimate of the number of living coral colonies that should have been present in such area. After subtracting all undamaged corals from the damaged-area transects, the damaged coral was determined to number approximately 121 specimens, including 43 medium-ecosystem value colonies and 51 low-ecosystem value colonies.<sup>15</sup>

### III. LEGAL AUTHORITY FOR ENFORCEMENT

#### A. Statutory and regulatory protection of live coral within Molokini Shoal MLCD

Hawai'i Revised Statutes ("HRS") § 190-1 states that "[n]o person shall fish for or take any fish, crustacean, mollusk, live coral, algae or other marine life, or take or alter any rock, coral, sand or other geological feature" within any MLCD. HRS § 190-2 grants DLNR the authority to promulgate rules that "govern[] the taking or conservation of fish, crustacean, mollusk, live coral, algae, or other marine life as it determines will further the state policy of conserving, supplementing and increasing the State's marine resources." HRS § 190-3 (emphasis added).

Pursuant to HRS chapter 190, Hawaii Administrative Rules ("HAR") § 13-31-3 makes it unlawful for any person to "fish for, catch, take, injure, kill, possess, or remove" any live coral, or to "take, alter, deface, destroy, possess, or remove any . . . coral." HAR § 13-31-3(1), (3) (emphasis added). Commercial permittees are also required to conform to terms and conditions of their Molokini Shoal Commercial Use Permit; the Molokini Shoal Commercial Use Permit covering *Trilogy II* at the time of this incident further required compliance with all applicable law. HAR § 13-31-4; 2007-2009 Molokini Shoal MLCD Commercial Use Permit # 22 ("Exhibit H").

#### B. Statutory Administrative Fines Authorized for Violations of Title 13, Chapter 31, HAR

HRS § 187A-12.5 provides for administrative fines, fees, and costs resulting "from a violation of subtitle 5 of title 12, or any rule adopted thereunder." HRS § 187A-12.5 authorizes an administrative fine of up to \$1,000 for a first-time violation that does not involve threatened or endangered species. HRS § 187A-12.5(c). Additionally, "up to \$1,000 may be levied for each specimen of . . . aquatic life taken, killed, or injured" in violation of any rule adopted under subtitle 5 of title 12. HRS § 187A-12.5(e) (emphasis added). "Aquatic life" includes "any type or species of . . . coral . . . includ[ing] any part, product, egg, or offspring thereof." HRS § 187A-1 (emphasis added). A "specimen" of stony coral is generally

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<sup>14</sup> Exhibit G at 4-5.

<sup>15</sup> Exhibit G at 6.

understood as a coral colony, or the smallest ecologically-functional unit of coral.

HRS § 187A-12.5(a) further authorizes the Board “to recover administrative fees and costs . . . or payment for damages or for the cost to correct damages resulting from” a violation of the statutes and rules pertaining to aquatic resources.

Finally, in an extreme case, the Board “may revoke” a Molokini Shoal Commercial Use Permit “for any infraction of the terms and conditions of the permit, and a person whose permit is revoked shall not be eligible to renew a permit until the expiration of one year from the date of revocation.” HAR § 13-31-5. As of this time, no Molokini Shoal Commercial Use Permit has been revoked for a violation of MLCD rules.<sup>16</sup>

#### **IV. APPLICATION OF LAW AND RECOMMENDED FINE PURSUANT TO CIRCUMSTANTIAL FACTORS AND DAR STAFF’S SETTLEMENT DISCUSSION WITH THE RESPONSIBLE PARTY**

Maka Kai, through the actions of its employees, violated HAR § 13-31-5 and the terms of its Molokini Shoal MLCD Commercial Use Permit when *Trilogy II* impacted the coral reef at Molokini, injuring approximately 121 specimens of live stony coral at the Molokini Shoal MLCD. See Exhibit H at 1. While the subject incident occurred in a sensitive and highly-protected marine life conservation district, numerous mitigating factors lead DAR staff to recommend an administrative fine of \$18,000.00 and waive assessment of administrative costs of \$3,183.30. DAR staff further recommends that the fine be reserved for and directly credited to educational materials and programs to reduce ecological impacts of human activity on coral reef habitat throughout the state. DAR carefully balanced the following adverse and mitigating factors in formulating its recommendations:

##### **A. Adverse factors**

Molokini MLCD is characterized by a relatively pristine ecosystem, with abundant coral beds, exceptional water clarity, and a wide variety of marine life. These characteristics, combined with the sheltered nature of the waters within Molokini crater, have made Molokini a popular destination for commercial and recreational diving. Due to Molokini’s ecological value and popularity as a recreational resource, activity within the MLCD is highly regulated, and rule violations are treated seriously by DLNR. As detailed below, DAR staff acknowledges that Maka Kai has demonstrated a genuine appreciation for the sensitive and protected nature of the MLCD; nevertheless, the high value of the Molokini MLCD has been considered as an adverse factor in its consideration of the proposed settlement agreement.

In addition, DAR staff finds that the risk of impact in this case was avoidable. Maka Kai acknowledges that it was the duty of Captain Lee to clearly communicate his reliance on the co-captain to monitor water depth as he approached the rim of the crater. The change in route also dictated reducing the speed of the vessel to ensure time to alter course or stop in the event a shallow area was encountered.

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<sup>16</sup> One of the original 42 Molokini Shoal MLCD Commercial Use Permits expired when its owners declined to renew their permit.

## B. Mitigating factors

In addition to the adverse factors cited above, a number of mitigating factors affect the magnitude of DAR's recommended sanction. First, unlike other coral damage cases, Maka Kai and its owners exercised a high standard of care in the selection of the employee who was in command and control of the *Trilogy II* at the time of this incident. Maka Kai and its employees also appeared to take immediate mitigative and corrective measures upon the *Trilogy II*'s impact on the coral reef, and the standards of professionalism Coon Brothers brought to Maka Kai were exemplified by the actions of Captain Lee following the grounding. Second, the incident is the first involving Maka Kai or its parent company, Coon Brothers, Inc., who both have an exemplary record of compliance with all other regulations protecting the marine environment. Finally, DAR staff acknowledges that these companies have demonstrated genuine concern for the health and protection of the marine environment throughout their areas of operation, and have voluntarily invested a substantial amount of their own resources to this end.

As discussed above, it appears that Maka Kai did engage in careful selection of the employee who was in control of the *Trilogy II* at the time of this incident. Captain Lee had joined the Coon Bros. family of companies as a full-time employee in March 2004. Captain Lee worked first as a deckhand and was promoted to boat captain upon being licensed as a U.S. Merchant Marine Officer in May 2007. At 53 years of age, Captain Lee was considered a mature and risk-averse employee, and until the incident had an exemplary employment record. As such, DAR staff agrees that Maka Kai exercised a high standard of care in selecting the captain of its charter in this incident. There is no evidence that Maka Kai or its owners were complicit in the course chosen by Captain Lee or his failure to exercise greater caution in attempting to enter the crater. DAR staff notes that notwithstanding the qualifications of its charter captain, given the seriousness of the grounding, Maka Kai suspended him as a vessel captain for six months as a result of this incident.

Moreover, both Captain Lee and Maka Kai demonstrated an immediate and continuing level of professionalism in their response to this incident, which included immediate action to mitigate the damage from the *Trilogy II* grounding. Upon feeling his vessel impact the reef, Captain Lee immediately set his vessel transmission to neutral, and flagged down a passing boat for assistance. Upon safely securing his vessel within the crater, Captain Lee then promptly notified the USCG of the incident and requested permission to transfer his passengers to another vessel. These steps reflect his commitment to the safety of the vessel's passengers and acknowledgment of his personal responsibility in causing the incident. By promptly taking these steps Captain Lee may have prevented additional ecological damage were the vessel to lose power or sink. DAR staff recognizes that this further demonstrates the high standard of professionalism Maka Kai requires of its employees.

In the aftermath of the grounding, both Captain Lee and Maka Kai continued to demonstrate acceptance of responsibility, cooperating fully with DOCARE and USCG officers as they investigated the details of the incident. Such cooperation included completing a USCG incident report, allowing inspection of the *Trilogy II* prior to its repair, and candidly responding to all questions asked by the DOCARE investigator. Again, DAR staff considers this demonstration of professionalism and acceptance of responsibility as a mitigating factor in its recommended fine.



In formulating its recommendation, DAR staff has also considered Maka Kai's history of demonstrated compliance with resource regulations prior to this incident. Apart from this grounding, Maka Kai has complied with all other permit terms and conditions on its current Molokini Shoal MLCD Commercial Use Permit. Notably, Maka Kai has an unblemished record of timely reporting of monthly passenger count reports as required by its Molokini MLCD Commercial Use Permit. Maka Kai's cooperation with this important data-gathering effort will assist with future management of the Molokini MLCD. DAR staff believes this history of compliance further reflects Maka Kai Charters' appreciation and respect for the ecology of Molokini, and the management efforts taken by DAR to ensure its ecological integrity. As such, DAR staff has considered this history of compliance as a mitigating factor in its settlement recommendation.

Finally, DAR staff notes that Coon Brothers regularly and voluntarily invest in civic-minded activities that also reflect their bona fide concerns for the ocean environment and its resources. In 2008, Trilogy Excursions, a Maka Kai affiliated company, received the state's Living Reef Award for its commitment to conservation; more recently, Trilogy received one of only three "Gold" eco-tour operator certifications by the state-sponsored Hawai'i Ecotourism Association, the only such certification awarded to a boating operation.

For the past two years, Trilogy Excursions has also dedicated one day each month to its Blue 'Āina program, where it provides vessel transportation for volunteers to collect marine debris. Volunteers donate approximately \$1,000 per Blue 'Āina trip, which is subsequently donated to local ocean protection organizations such as the Maui Reef Fund and the Surfrider Foundation; Trilogy Excursions, meanwhile, absorbs the costs associated with the use of its vessel. Over the past 22 trips, this has amounted to \$49,280 in absorbed vessel costs, approximately \$22,000 in volunteer donations to ocean protection organizations, and \$132,000 in volunteer labor (approximately \$6,000 per trip). Trilogy Excursions estimates that by the end of December 2011, the environmental stewardship work conducted by its Blue 'Āina program could be valued at over \$350,000 in the two years of its existence. This investment is consistent with Coon Brothers' history of conservation and civic responsibility, which includes being the first commercial operation to pay for on-shore treated waste disposal, supporting cultural practitioners to educate vessel crew, honoring long-held agreements with Lāna'i residents to abstain from commercial activities on Hulupo'e Beach on weekends and holidays, and supporting outreach opportunities for a variety of service agencies to engage with the Lāna'i community. Such voluntary and investment-backed demonstrations of civic and environmental responsibility have also been considered as a mitigating factor in DAR's recommended fine.

### **C. Maximum authorized penalties**

HRS § 187A-12.5 authorizes a civil fine of \$1,000 for a first-time violation of the Molokini MLCD rules, as well as an additional \$1,000 per specimen of aquatic life taken or killed in violation of such rules. Given the estimated 121 coral colony specimens impacted by the *Trilogy II* grounding, the maximum civil fine authorized in this case would be **\$122,000**.

HRS § 187A-12.5 further authorizes the Board to assess administrative fees and costs, including attorneys' fees, relating to a violation of Molokini MLCD rules. DLNR administrative costs in responding to this incident, including staff time and vessel usage, total \$3183.30.

#### D. Recommended Penalty

Based on the ecological assessments of the impacted area, along with careful consideration of the adverse and mitigating factors noted above, DAR staff recommends a fine of **\$18,000** be levied against Maka Kai Charters, Inc. for the injuries to the coral reef within the Molokini Shoal MLCD. When this recommended fine is considered on a per-area basis, DAR staff finds that it is consistent with previous coral injury cases, and the relative ecological value of the coral reef impacted. For example, if the equivalent per-area fine for the high-value coral reef damaged in the *Kai Anela* case was applied to the area impacted by the *Trilogy II*, the fine here would be calculated as approximately \$33,000. However, as noted above, DAR staff's ecological assessment revealed that the damaged reef here is comprised of a medium-value ecosystem in a high-wave action area, indicating that full recovery will occur relatively quickly, as compared to the damaged coral reef in the *Kai Anela* case. In addition, the responsible party in the *Kai Anela* incident was largely inexperienced with only three days' training; in this case, Captain Lee had extensive navigational experience, including navigating Molokini specifically on 50 prior occasions. Where the *Kai Anela's* mechanic refused the order of the captain to obtain a tow after the vessel experienced engine difficulties, resulting in the *Kai Anela's* sinking, Maka Kai's owners and employees took immediate and continuing steps to mitigate all possible harms from the *Trilogy II* grounding. Finally, DAR staff notes that the *Kai Anela* crews' failure to take immediate action for the safety of their passengers, such as their failure to promptly distribute personal floatation devices, resulted in an extremely hazardous and unsafe situation for passengers who were forced to abandon the sinking vessel. In contrast, Maka Kai's captain appeared to place the safety of his passengers as his main priority in this incident, and arranged for their transfer to another vessel as soon as he had safely secured the *Trilogy II* to a designated mooring.

Due to Maka Kai Charter's immediate and appropriate response to this incident; their cooperation with the following investigation; their acceptance of responsibility; and their demonstrated investment-backed concerns for the environment, DAR staff recommends that the administrative costs of \$3183.30 be **waived**. In addition, given Maka Kai's demonstrated respect and immediate corrective measures taken as a response to this incident, revocation of Maka Kai's Molokini Shoal MLCD Commercial Use Permit does not appear appropriate in this case.<sup>17</sup>

#### V. RECOMMENDATIONS

1. That the Board approve the proposed settlement and find Maka Kai Charters, Inc. to have violated HAR § 13-31-3 when its vessel, *Trilogy II*, killed or injured 121 specimens of live stony coral within the Molokini Shoal Marine Life Conservation District;
2. That the Board impose a fine of \$18,000 against Maka Kai Charters, Inc., to be credited towards coral reef educational materials or programs, as identified by DAR staff, within sixty (60) days of the date of this submittal;

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<sup>17</sup> DAR staff notes that notwithstanding the egregious circumstances in the *Maka Kai* case, the Board did not order revocation of *Kai Anela's* Molokini Shoal MLCD Commercial Use Permit.

3. That the Board delegate to the Chairperson or his designee its authority to execute all necessary documents to carry out its recommendations under this submittal.

Respectfully Submitted,

  
Robert Nishimoto, Aquatic Biologist  
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:

  
for William J. Ailā, Chairperson  
Department of Land and Natural Resources



**EXHIBIT LIST**

**In support of:**

**Enforcement Action against Maka Kai Charters, Inc. for Injuring Coral within the  
Molokini Shoal Marine Life Conservation District  
Enf. File No. DAR-MA-11-0001**

- A.....Hilbert Manlapao, DOCARE Investigator, DAR: Molokini Shoal  
MLCD—Coral Reef Damage Investigation MA# 09-276 (Oct. 20,  
2008)
- B.....State of Hawaii Department of Land & Natural Resources Division  
of Boating & Ocean Recreation, Trilogy II Mooring Permit  
(October 15, 2008)
- C.....Ofc. Robert Oakley, USCG, Summary of Statement Form (Aug.  
19, 2008)
- D.....Hilbert Manlapao, DOCARE Investigator, State of Hawaii  
Property Report MA # 09-276 (Aug. 19, 2008)
- E.....Clarence Yamamoto, DOCARE Evidence Historian, Follow Up  
By Evidence Custodian (Aug. 19, 2008)
- F.....John Mitchell, Darla White, Skippy Hau, Preliminary Assessment  
Report Trilogy II/Molokini Reef Damage (Aug. 14, 2008)
- G.....Russell Sparks, DAR, Trilogy II Molokini MLCD Grounding  
Habitat Damage Assessment August 2008 (October 8, 2008)
- H.....2007-2009 Molokini Shoal MLCD Commercial Use Permit No. 22  
(*Maka Kai Charters/Trilogy II*)



# Exhibit A

**HILBERT MANLAPAO  
DLNR/DOCARE  
175 S. PUUNENE AVE.  
KAHULUI, HI 96793**

**MA# 09-276**

**DAR: Molokini Shoal MLCD-Coral Reef Damage Investigation**

**LOCATION: Outside Western Portion Of Crater Wall, Approximate Location Is  
N20°95406, W156°68690, N20°92629, W156°69415, N20°63456, W156°49818, N20°63476,  
W156°49820**

**RESPONSIBLE: MAKAI CHARTERS, INC.**

**SYNOPSIS:**

On Monday, August 18, 2008 at approximately 1400 hours, writer conducted an investigation regarding a complaint that a vessel, Trilogy II, allegedly entered into the shallow water of Molokini Shoal MLCD causing coral reef damage from the vessel's rudder. During the investigation, writer made contact with DAR's biologist, complainant, witness, and suspect to obtain information in regards to above incident.

**ASSIGNMENT:**

On Saturday, August 16, 2008 at approximately 1500 hours, writer was assigned by Field Supervisor C. YAMAMOTO to investigate above complaint made by USCG Ofc. R. OAKLEY.

**SCENE:**

Molokini Shoal "Reef's End" (outside portion of crater wall)

**DAR BIOLOGIST CONTACTED (SKIPPY HAU):**

On Monday, August 18, 2008 at approximately 1400 hours, writer made contact with DAR biologist, Skippy HAU, to obtain information in regards to coral reef damage at Molokini Shoal. HAU stated that on August 14, 2008, at approximately 0845 hours, he, along with John MITCHELL, and Darla WHITE entered the water near the first visible land of crater on the outside (Western) portion of crater wall and snorkeled in the north east direction along the crater wall searching for coral damage. HAU stated that there were two parallel scar lines at approximately 100m north of land in approximately 1-1 ½ meters of water. The northernmost hull scar line is ~6.6m long with ~3/4 meter initial hull damage and ~2m lateral damage. The



southernmost hull scar line, which is approximately 7m from above, is ~6.4m long with ~3/4 meter initial hull damage and ~2m lateral damage. According to HAU, the paint from the hull was evident along both scar lines and there were fragments from the vessel's rudders. HAU provided writer a written statement regarding the extent of coral reef damage, and photos. HAU also stated that it was difficult to do a full assessment due to strong currents and murky water but will return to the area to conduct a full survey at a later time.

GPS waypoints for each end of damage:

N20'95406, W156'.68690

N20'.92629, W156'69415

N20'.63456, W156'49818

N20'63476, W156'49820

**RESPONSIBLE IDENTIFIED:**

According to the US Coast Guard Lt. James STELLFLUG, the vessel responsible for the coral reef damage is Trilogy II, owned by Maka kai Charters, Inc., and captained by Lawrence A. LEE ( [REDACTED] )

**US COAST GUARD CONTACTED:**

On August 19, 2008 at approximately 1350 hours, writer made contact with US COAST GUARD Officer who verbally identified himself as Robert OAKLEY. USCG OAKLEY stated that on August 14, 2008 at approximately 1100 hours, he responded to Lahaina welding shop at Mala drydock (Drakes) to conduct an investigation in regards to Trilogy II's vessel rudder that was being repaired due to above incident that occurred on Molokini Shoal on August 13, 2008 at approximately 0800 hours. USCG OAKLEY stated that while conducting an inspection of above vessel's rudder at above location, USCG OAKLEY observed that there were more damages on the port section of the rudder than on the starboard section. However, both side of the rudders have obviously been involved in a grounding. Moreover, USCG OAKLEY stated that while conducting a closer inspection on above vessel's rudder, he observed a small piece of coral that was embedded in the bottom of the rudder and suspects that the coral belongs to Molokini Shoal's reef where the above vessel's rudder have been reported to have been damaged. USCG OAKLEY took several photos of the coral that was embedded into the rudder and then placed it in a small ziplock bag for the purpose of evidence. USCG OAKLEY then contacted DLNR to conduct a follow up investigation in regards to above findings.

**RECOVERED THE CORAL FROM USCG (OAKLEY):**

On August 19, 2008 at approximately 1430 hours, writer recovered the coral from USCG OAKLEY that was found embedded in the bottom of the Trilogy II's vessel rudder. USCG OAKLEY also provided writer several photos of above vessel's rudder with a piece of coral embedded into it. Both photos and coral will be used as evidence.

**TRILOGY II VESSEL'S CAPTAIN CONTACTED/MIRANDA'S WARNING GIVEN:**

On Tuesday, August 19, 2008 at approximately 1440 hours, writer made contact with Trilogy II's vessel captain at 7 Ku'ualoha Street to conduct an interview in regards to Molokini coral reef damage. Trilogy II's vessel captain verbally identified himself and via Hawaii driver's license as Lawrence LEE. Writer, then, advised Trilogy II vessel's captain, Lawrence LEE, of his Constitutional Rights. Upon reading the Miranda's right to him out loud, he related that he understood his rights and was willing to waive those rights by signing the constitutional rights form. The following statements were then obtained from LEE regarding this case.

**Writer:** *"In your words, tell me the details of the incident on Wednesday, August 13, 2008, at Molokini Shoal."*

**Lee:** "On Wednesday, August 13, 2008, I conducted a charter trip from Maalaea Harbor to Molokini Shoal on the vessel "Trilogy II" with 31 passengers onboard. I departed the Maalaea boat harbor at approximately 0635 and arrived at Molokini Shoal ocean water at approximately 0755 hours. Since it was a beautiful day with calm winds blowing in the east direction, I decided to go around the Molokini crater in clockwise direction (east to west) to give the passengers a tour around the island for the purpose of education. After rounding the crater heading towards the deeper water entrance to the crater, I accidentally entered into the shallow water at the "reefs end" section of the Molokini shoal and the vessel's rudder subsequently hit the reef. I immediately put the vessel's transmission into neutral which allowed the vessel to float freely into extremely shallow water. The Seafire vessel arrived at Molokini Shoal at approximately 0800 hours and I asked the captain for assistance to pull my vessel out from the shallow water. Seafire vessel captain agreed and pulled my vessel out from the shallow water utilizing the trilogy's vessel starboard stern line. My vessel was pulled backward by Seafire vessel from shallow water to deeper water at that time. I was not aware that the Trilogy vessel's rudder had hit the coral reef while being pulled out by Seafire, however, I felt the vessel bounce as it was being pulled out from shallow water heading toward the deeper water. After the vessel was pulled out freely from the shallow water, I secured the Trilogy II vessel in the crater mooring "T" section and then conducted a damage assessment on the vessel. During the assessment, I discovered that there was no damage to the propellers or propulsion systems, but noticed that both of the leading corners of the rudder were damaged. Also, I noticed that there was some minor water seepage in the compartment behind the port rudder room. At that time, I immediately contacted the US Coast Guard and Trilogy management of the situation and

inquired an authorization from US Coast Guard to transfer the Trilogy II's passengers to Mahana Na'ia vessel who was in Molokini Shoal at the time of incident. After I was given a verbal authorization from US Coast Guard to transfer the passenger, Mahana Na'ia vessel was then maneuvered and secured next to Trilogy II vessel and began transferring the passengers onboard and then transported to Maalaea boat harbor without any injuries. I arrived at Maalaea boat harbor at approximately 1155 hours and met with Trilogy management and maintenance personnel. Furthermore, the US Coast Guard arrived at approximately 1230 hours."

**Writer:** *"How long have you been a boat captain?"*

**LEE:** *"I've been a boat captain since March of 2007."*

**Writer:** *"Do you have a boat captain license or certificate?"*

**LEE:** *"Yes"*(Lee provided writer a copy of his captain license)

**Writer:** *"How many times have you traveled to Molokini Shoal as a boat captain?"*

**LEE:** *"I've been to Molokini Shoal on numerous occasions as a boat captain, approximately 50 times)."*

**Writer:** *"Do you have a permit to engage in commercial activities in Molokini Shoal?"*

**LEE:** *"Yes"*

**Writer:** *"What route do you normally take when you arrive at the Molokini area, or, what area of Molokini do you take your boat?"*

**LEE:** *"My normal route to the Molokini Shoal was straight to the crater, but since it was a beautiful day due to calm winds blowing in east direction, I've decided to go around the Molokini crater in clockwise direction (east to west) to give the passengers a tour around the island for the purpose of education and also show them the scenery on the other side of the crater."*

**Writer:** *"How familiar are you with the Molokini area?"*

**LEE:** *"I pretty much know the area."*

**Writer:** *"If you pretty much know the area, how did your vessel ended up in the shallow water?"*

**LEE:** *"While approaching in Molokini Shoal area known as "reefs end", I've checked the ocean depth through my instrument known as depth gauge. At that time, depth gauge revealed that the vessel was in ocean water at 154 feet, but after a few seconds I've noticed that my vessel was in*

*the shallow reef. Moreover, Mr. Lee stated that he was accustomed to seeing dive boats being secured at "reefs end" moorings as his landmarks and/or positional reference, however on that particular morning there were no dive boats on the "reefs end" mooring, except for unidentified vessel that was moored in the middle of the crater near the boundary of high water mark of the shoreline. As a result, I lost track of my position in reference to the shallow reef since the trilogy vessel was not equipped with GPS device to aid me navigate at Molokini crater and help me indicate the safe and unsafe waters."*

**Writer:** *"As your vessel hit the shallow reef, what direction was your vessel facing at?"*

**LEE:** *"As I entered in the shallow reef area, my vessel was facing in north east direction."*

**Writer:** *"Were you attempting to make a right turn into the shallow reef area to get to the crater ocean water?"*

**LEE:** *"No. I was heading toward northern direction when my vessel entered the shallow reef because when I check the vessel rudder, it was facing forward, therefore I was not attempting to make a right turn."*

**Writer:** *"If your vessel's rudder was facing forward, how did your vessel ended up in shallow reef?"*

**LEE:** *"Since the current was pretty strong that day, the vessel was probably had been pushed by the current toward the reef."*

**Writer:** *"While operating the vessel, do you have a clear view of your vessel's distance from the reef?"*

**LEE:** *"No. Since I was operating on the port helm station of the vessel, I did not have a clear view of the reef. My co-captain (Ryan HALL) who was on the starboard helm station could not react quickly enough to warn me that we were entering the shallow water. Also, I was being distracted by activity around my helm station."*

**Writer:** *"What is the wave, wind, and current status at the time of incident?"*

**LEE:** *"Wave was not choppy, calm wind, but it has a strong current."*

**Writer:** *"When your vessel had entered in the shallow reef, were you aware that your vessel had hit the coral reef?"*

**LEE:** *"No. When my vessel had entered in the shallow water, I was not aware that the vessel's rudder had hit the coral reef because I immediately put the vessel's transmission into neutral which allowed the vessel to float freely into extremely shallow water, however when the vessel*

*was being pulled out from the shallow reef by Seafire vessel, I've felt the boat had bounce, but I wasn't aware that the vessel's rudder had hit and/or damage the coral reef."*

**Writer:** *"Did you conduct an assessment of possible coral damages after the incident?"*

**LEE:** *"No. I only conducted an assessment of possible vessel damages after the incident."*

**Writer:** *"Were you under the influence of alcohol or any controlled substances (including prescribed narcotics) during this incident?"*

**LEE:** *"No."*

#### **SEAFIRE VESSEL'S CAPTAIN CONTACTED (DONALD BURNS):**

On August 19, 2008, writer contacted Seafire vessel captain via phone to obtain information in regards to Trilogy II vessel incident at Molokini Shoal. Seafire vessel's captain, who verbally identified himself as **Donald BURNS**, stated that on August 13, 2008 at approximately 0800 hours, while approaching Molokini Shoal, he observed Trilogy II vessel on the "reef end" section of Molokini Shoal. At that time, he observed the above vessel was in the shallow water. Trilogy II's captain (**Lawrence LEE**) verbally asked **Mr. BURNS** for an assistance to pull the trilogy vessel out from the shallow water. **Mr. BURNS** agreed and pulled the Trilogy II vessel out from the shallow water by utilizing the Trilogy II vessel's starboard stern line and kept a distance of approximately 40 feet from the Trilogy II vessel. Trilogy II vessel was slowly pulled backward from the shallow water until it reaches into the deeper water. Furthermore, **Mr. BURNS** stated while pulling the Trilogy II vessel out of the shallow water, he did not observe any coral reef damage from Trilogy II's rudder. After Trilogy II vessel was securely moored in the crater mooring area, **Mr. LEE** conducted an assessment of the vessel damages. Lastly, **Mr. BURNS** stated that at the time of incident, the current was strong.

#### **INVESTIGATION:**

Investigation thus far reveals that Trilogy II vessel's captain, **Lawrence LEE**, acknowledged that his vessel entered the shallow water of Molokini shoal. **LEE** denies knowledge of causing coral reef damage during the incident. However, **DAR biologist's** assessment of the coral reef at the same location revealed extensive coral reef damages comprising of two parallel scar lines and involving several coral species. There were also fragments found at the scar lines that were recovered by **DAR biologist** which were confirmed by **USCG Lt. James STELLFLUG** to be similar to Trilogy II's rudder. Also, **USCG Ofc. Robert OAKLEY's** inspection of Trilogy II vessel's rudder that was being repaired at Lahaina Welding Shop at Mala drydock revealed a piece of coral embedded at the bottom of the Trilogy II vessel's rudder.

**SEE ATTACHED:**

DAR biologist's coral reef damage assessment report  
USCG Ofc. Robert OAKLEY's written statement  
Copy of Captain's license & Hawaii Driver's License (Lawrence A. LEE)  
Constitutional rights form with Lawrence A. LEE signature  
Diagram of coral reef damage at Molokini Shoal provided by Dar biologists  
Photos

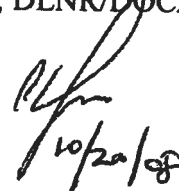
**DISPOSITION:**

Forward to DAR Board to conduct follow-up investigation  
Forward to Land Board for adjudication hearing

Submitted by,



OFFICER H. MANLAPAO #240  
STATE OF HAWAII, DLNR/DOCARE  
10/20/08 1545 HRS





## DLNR/DOCARE PHOTOGRAPH REPORT

**CITATION NUMBER:** MA# 09-276

**CLASSIFICATION:** Molokini Shoal MLCD-Coral Reef Damage Investigation

**LOCATION:** Outside Western Portion Of Crater Wall, Approximate Location Is  
N20°95406, W156°68690, N20°92629, W156°69415, N20°63456, W156°49818, N20°63476,  
W156°49820

**DATE/TIME TAKEN:** Unknown

**PHOTO TAKEN BY:** U.S. Coast Guard and Dar Biologists

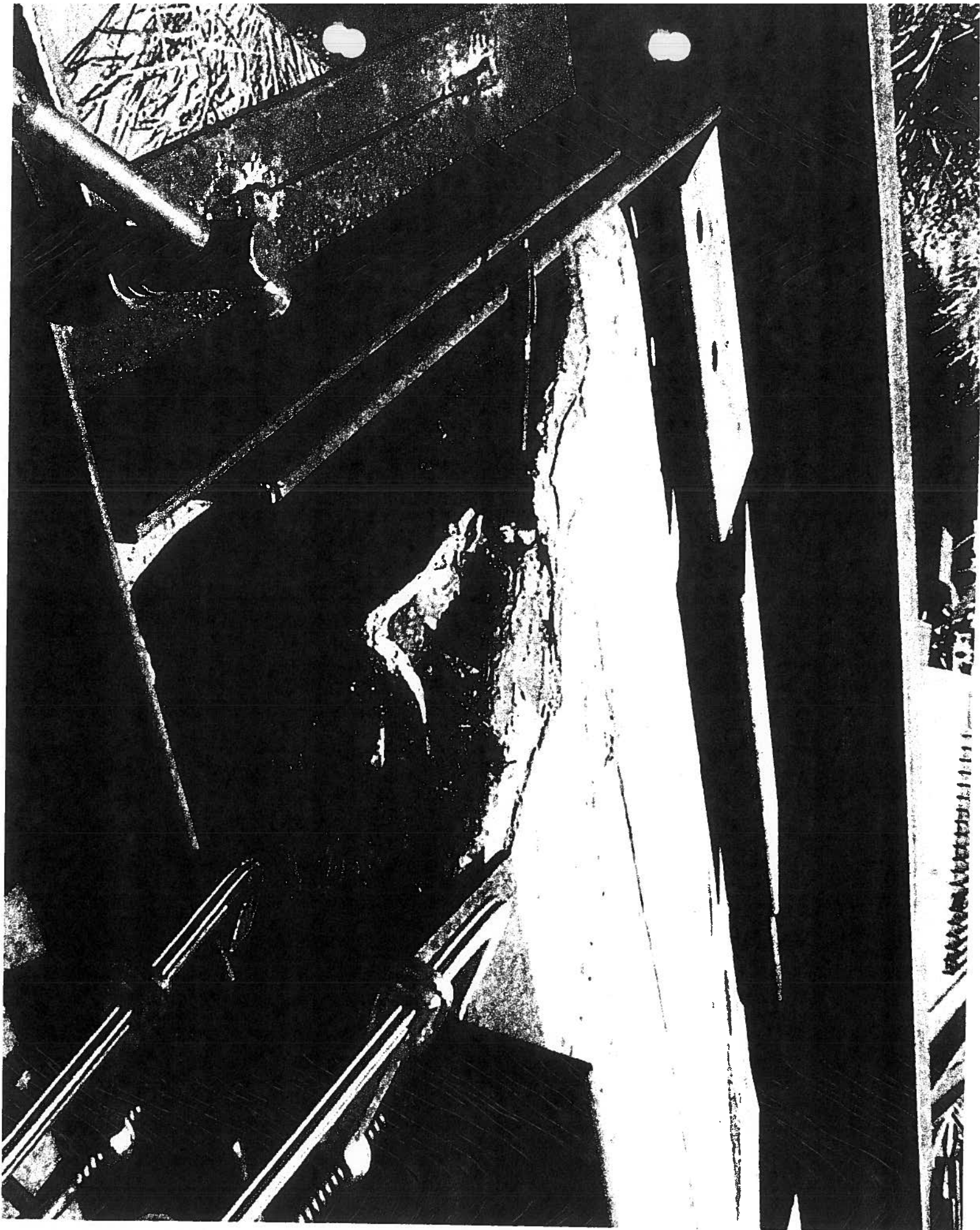
**DESCRIPTION OF PHOTOS:**

Photos 1-2 exhibit Trilogy II vessel's rudder and a piece of coral embedded under the rudder pointed by a blue pen. Photographs are a courtesy of U.S. Coast Guard.

Photos 3-4 exhibit two parallel coral reef scar lines at Molokini Shoal. Photographs are a courtesy of DAR biologists.

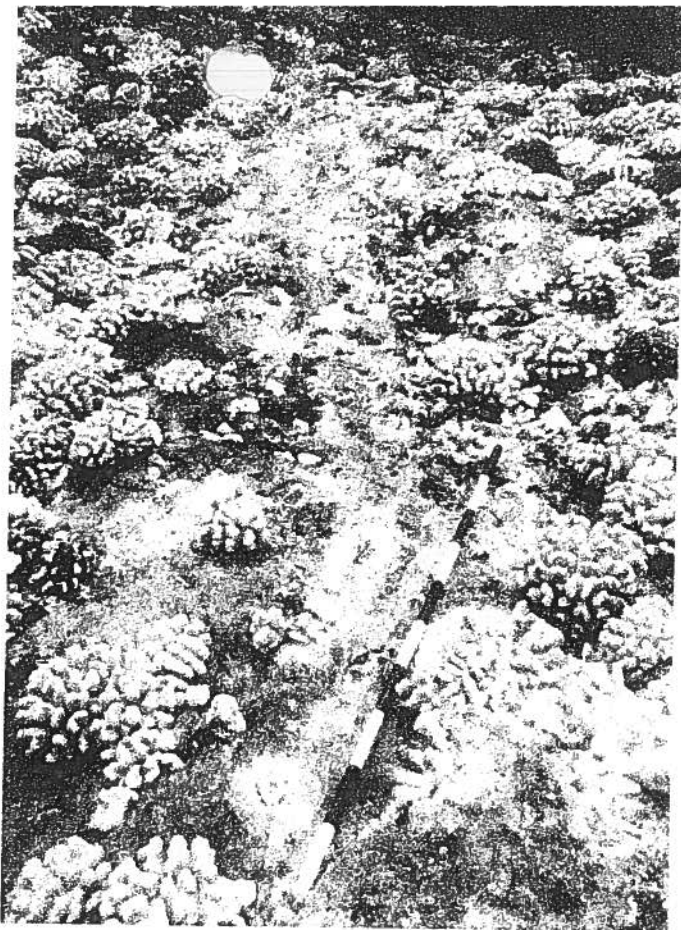
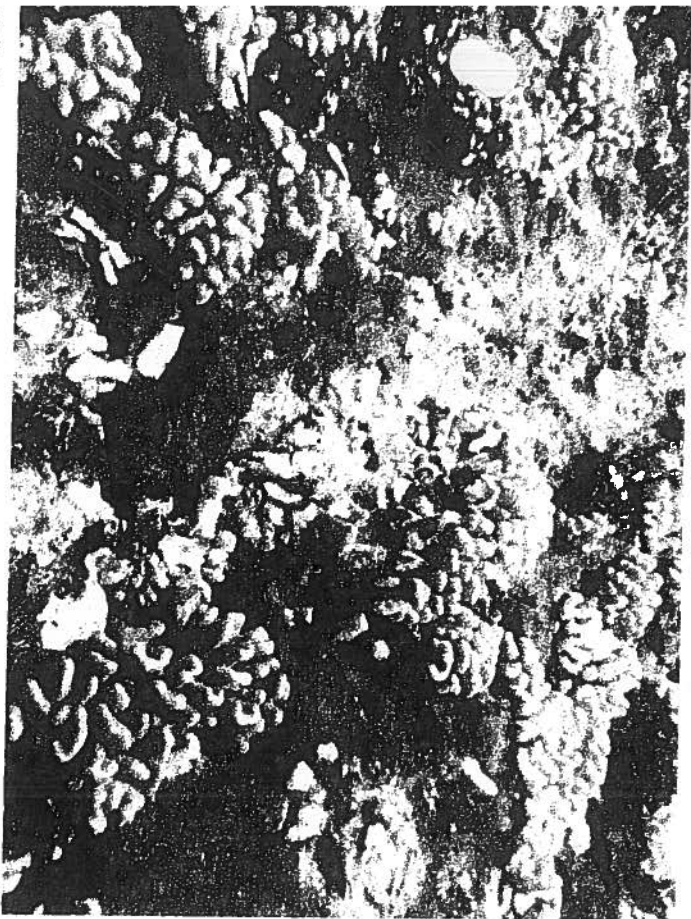
Photos 5-7 exhibit blue paint embedded in the coral reef scar lines at Molokini Shoal which is similar to the paint color of Trilogy II vessel's rudder. Photographs are a courtesy of DAR biologists.

Photo 8 exhibits fragments of a blue rudder found embedded in the coral reef scar lines at Molokini Shoal. Photograph is a courtesy of DAR biologists.

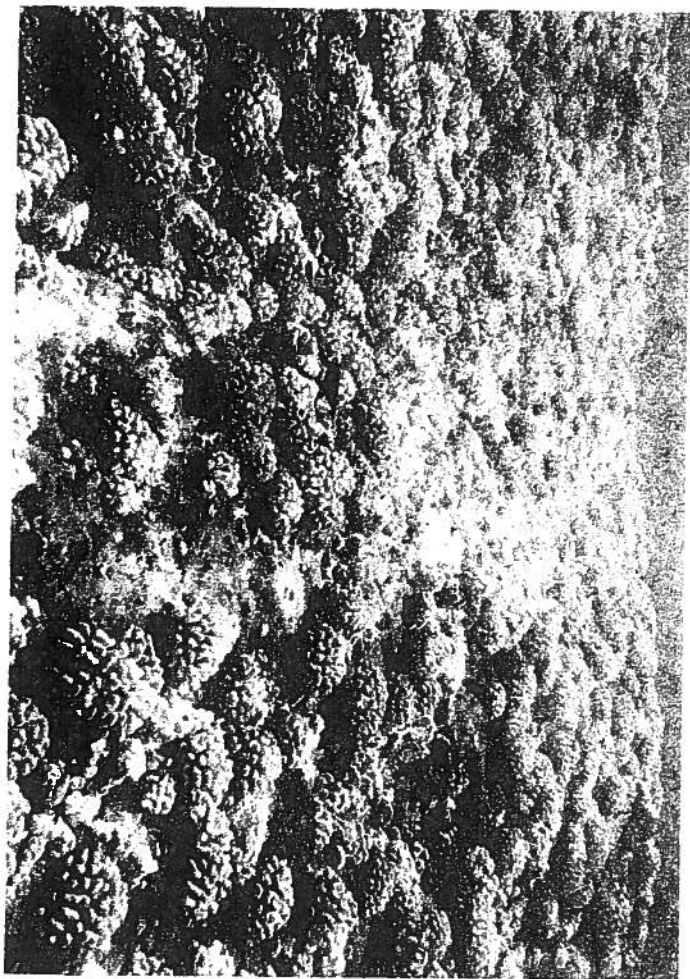
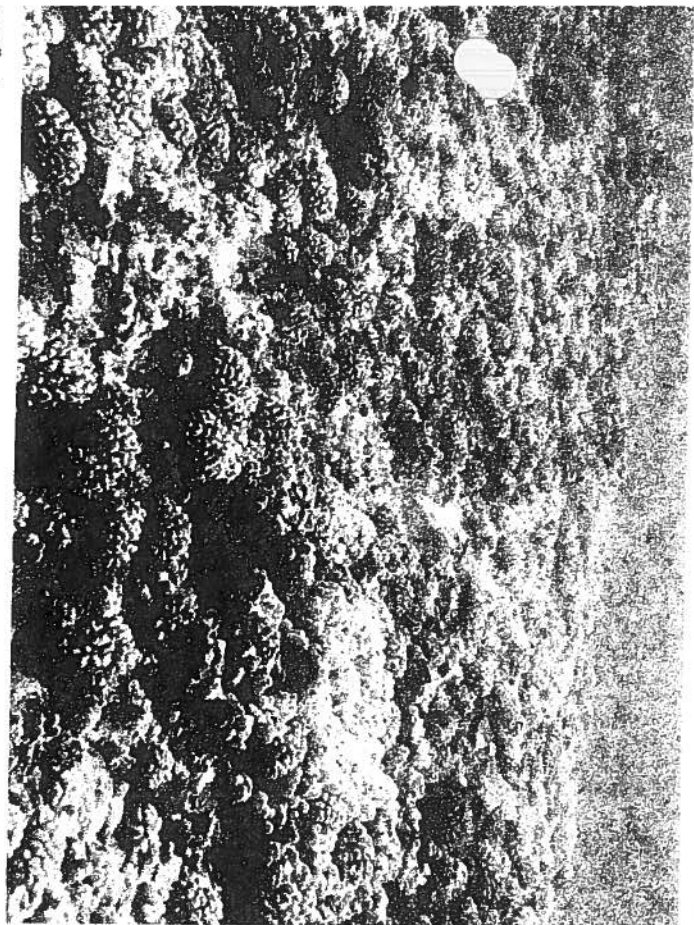
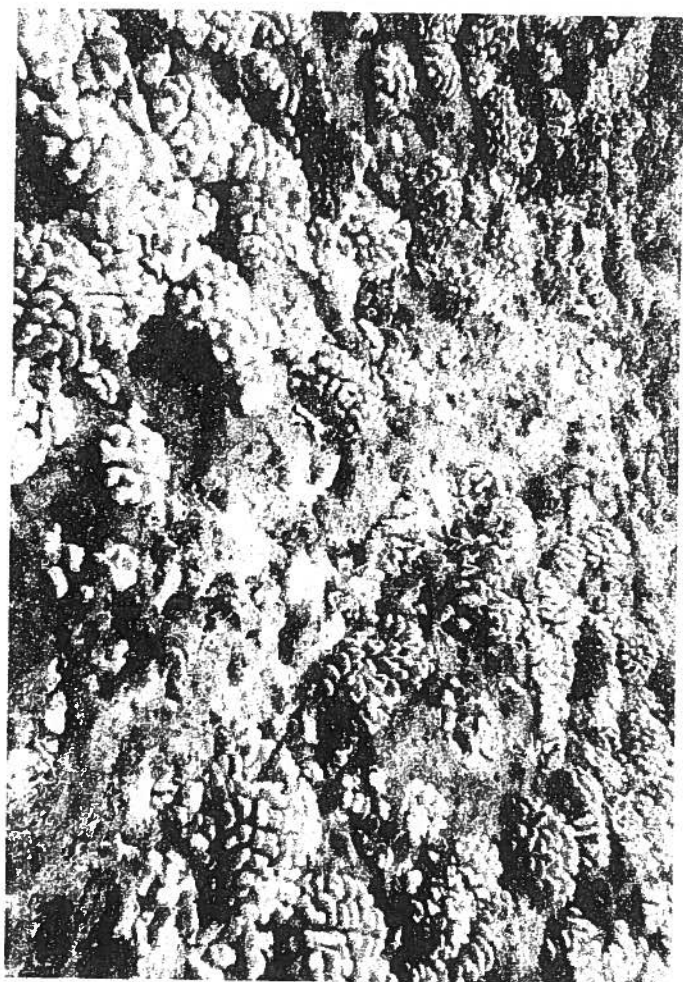
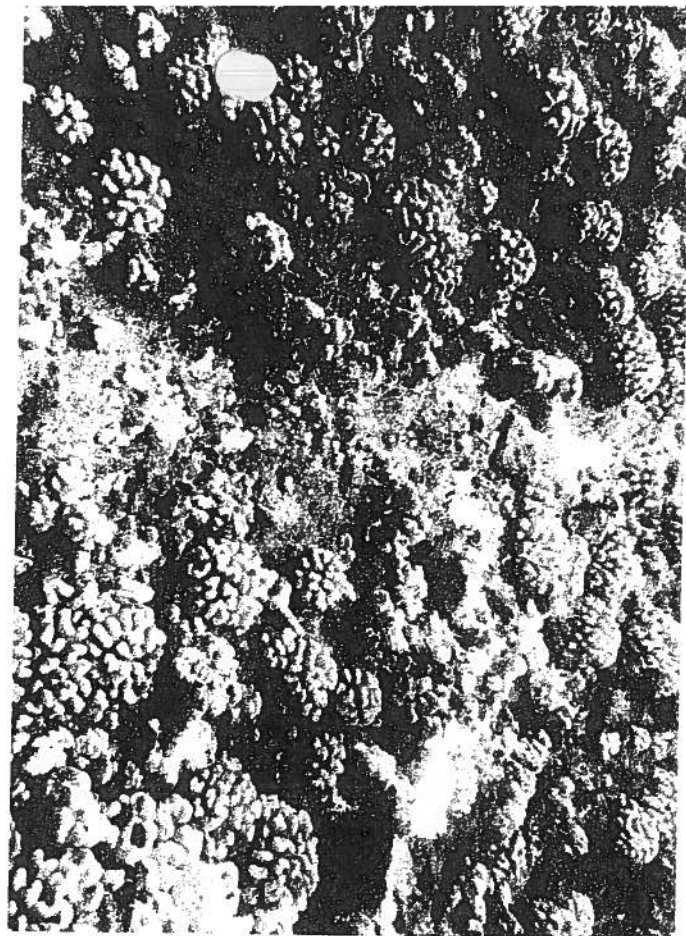


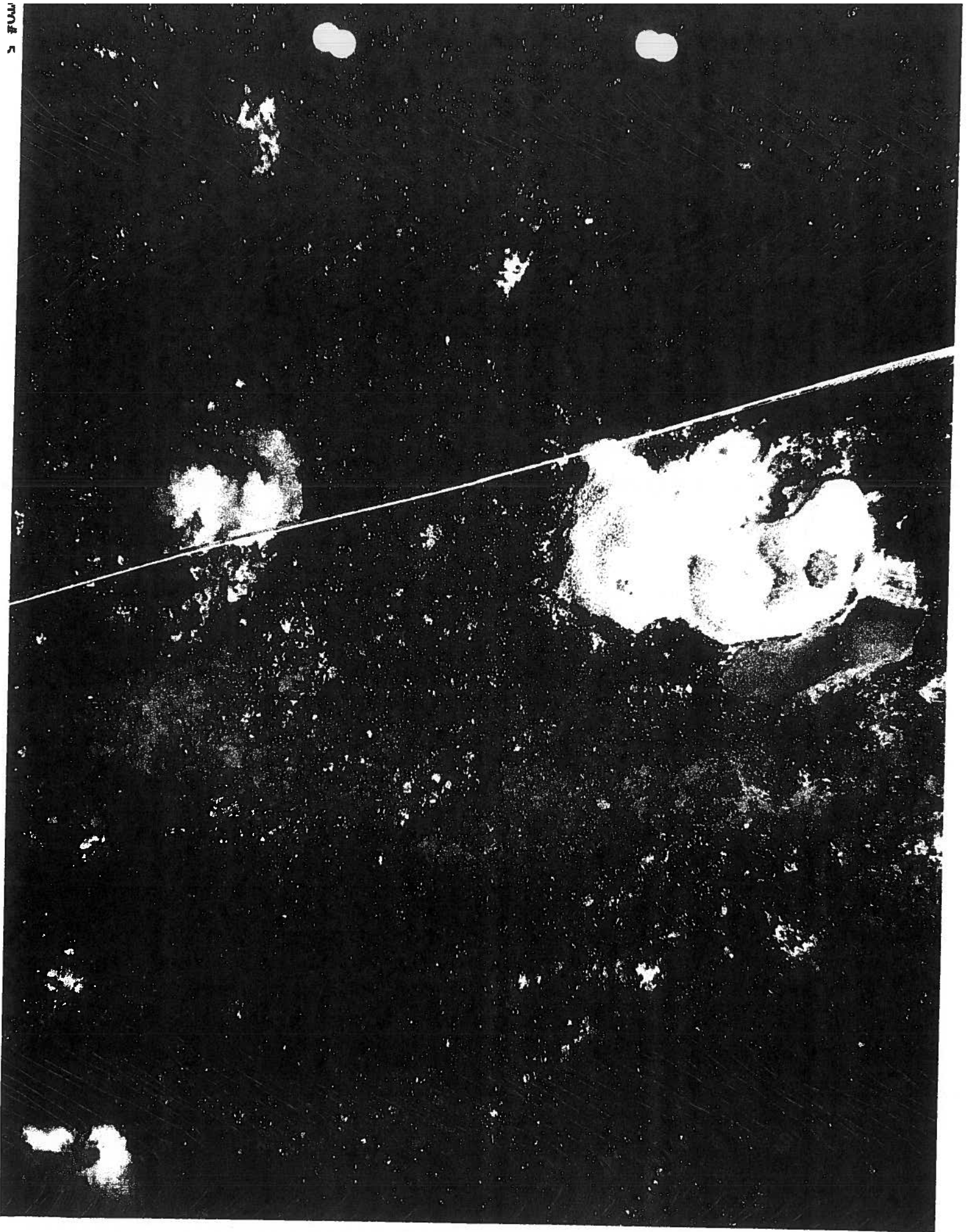




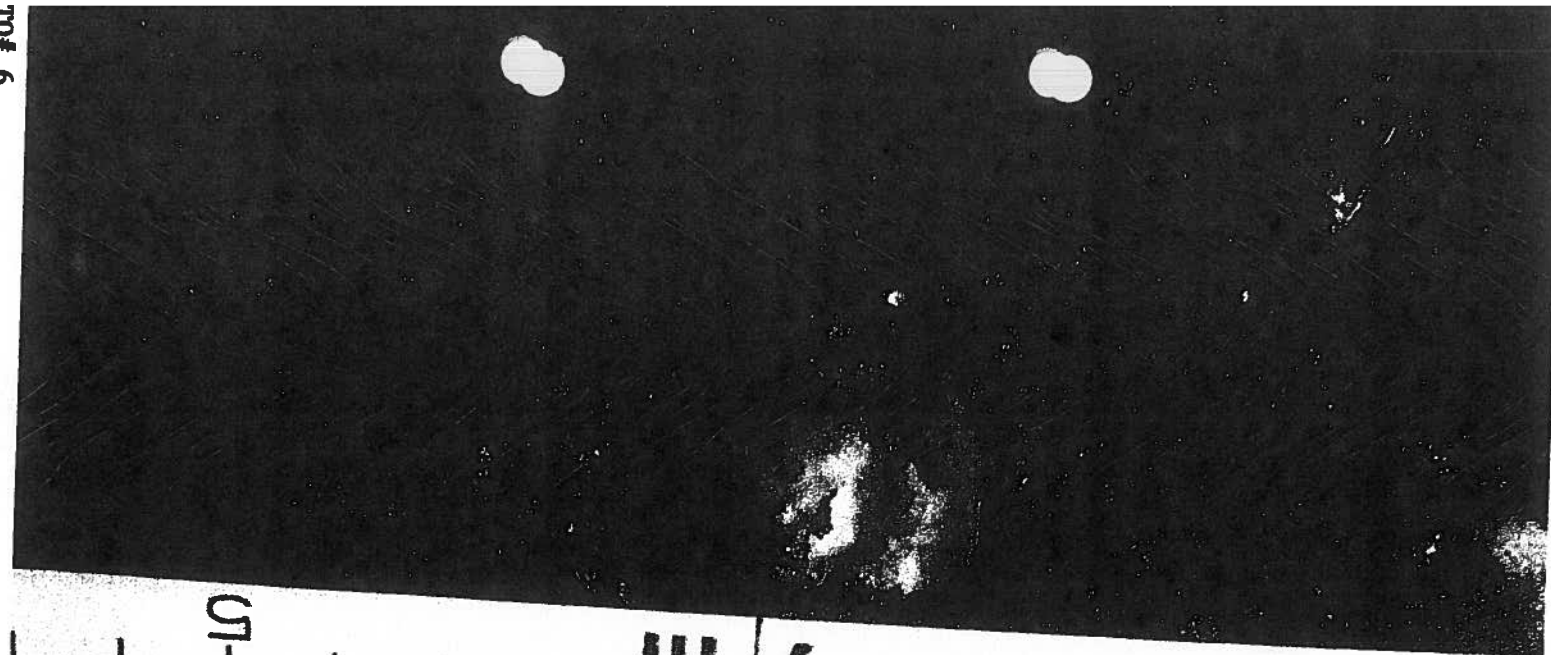






















# Exhibit B

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**DIVISION OF BOATING & OCEAN RECREATION**

Type of Agreement:

**MOORING PERMIT**No. M **3714**

Initial \_\_\_\_\_

Account No. **0883C002142**

New \_\_\_\_\_

Revision \_\_\_\_\_

Date **OCTOBER 15, 2008 MX**Other **RENEWAL**This permit is for a berth in the **MAALAEA** Boat Harbor at Berth No. **60/62** for boat withRegistered/Documented No. **908-806** Name of Boat **TRILOGY II** Length (overall) **55' (MH)** Length on Deck **55' (MH)**  
**EXP. 8/31/09** **LEASE EXP. 01/01/09**

I agree to the following terms, conditions, and charges:

- I agree to abide by all rules promulgated by the Department of Land and Natural Resources and conditions of this permit. Rules are available for purchase at District and Harbor offices.
- The Boat will be moored at the location designated by the official representative of the Department of Land and Natural Resources and tied up in a manner approved by the representative.
- The PERMITTEE will pay the STATE fees and charges in advance or before the first day of each month for the use of the berth and any additional facilities or services assigned or provided to the PERMITTEE by the STATE, in such sums as are prescribed by the HAWAII ADMINISTRATIVE RULES, SMALL BOAT HARBORS, DEPARTMENT OF LAND AND NATURAL RESOURCES, STATE OF HAWAII, in effect on the date of issuance of this permit, and in the future as prescribed by any amendments thereto. The fees in effect are as follows:

(1) Mooring	\$	<b>1105.92</b>	(4) Security Deposit	\$	
(2) <del>XXXXXX</del>	\$	<b>2205.92</b>	(5) Other	\$	<b>12.00 SIGN</b>
(3) Gear Locker	\$	<b>5.00</b>	(6) Monthly Payment	\$	<b>1122.87</b>
		<b>4.95</b>			

- A mooring permit may be cancelled by a boat owner upon 30 days written notification as prescribed in Section 13-231-9, and charges will be made in accordance with Section 13-234-2(d) of the Small Boat Harbors Rules. The Security Deposit will be applied to any outstanding balance. The remaining will be returned via mail within a reasonable time.
- This mooring privilege may be terminated by the Department of Land and Natural Resources by written order of the said representative and the boat will be moved from the mooring at any time on order of the said representative should necessity arise. Failure to do so may result in the impoundment of the vessel.
- This Mooring Permit and related use permits will AUTOMATICALLY EXPIRE if the vessel is absent from its assigned berth, mooring, and/or assigned offshore anchorage area for more than fourteen (14) days unless the holder of the permit applies for and receives permission from the Department to retain the use of the assigned berth and related permits upon the vessel's return (Sec. 13-231-11 of the Small Boat Harbors Rules).
- The Department of Land and Natural Resources, its members, officers, agents and employees shall not be liable to me or to any other person for damages to the boat or any other property or for injury to any person arising out of or incident to the mooring of said boat. And I hereby covenant and agree that I will indemnify and save harmless said Department, its members, officers, agents and employees from any and all manner of actions, liability, and claims arising out of or incident to said mooring; including acts incurred while attempting to save the vessel from sinking or preventing a pollution incident from occurring.
- This mooring permit shall not exceed one (1) year from **12/01/08** and the mooring privilege under this permit terminates on **11/30/09**  
 (Date) (Date)

A new mooring permit may be obtained within ninety (90) days prior to the termination date listed above only if all fees and charges due, per Hawaii Administrative Rules, have been paid and upon completion of a satisfactory vessel inspection. Failure to obtain a new mooring permit prior to the termination date listed above shall result in the vessel owner being charged the rate for vessels moored without a permit, and may result in the vessel being required to vacate the harbor, offshore mooring area, and/or ramp facility.

- The department retains the right to not issue a new permit after the termination date of this permit.

**10. NO PERSON SHALL LIVE/STAY ABOARD VESSEL WHILE SAID VESSEL IS IN THIS HARBOR.**

Permittee Signature

**JAMES E. COON, V.P.****MAKA KAI CHARTERS, INC.**

Printed Name of Permittee

**180 LAHAINALUNA RD.**

Home Address

**[REDACTED]**

Phone: Home

Work

**LAHAINA, HI 96761**

City

State

Zip

APPROVED:

DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION

By

**MILES J.K. LOPES SR. HARBOR AGENT II**

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION

ADDENDUM TO MOORING REQUEST  
AND AGREEMENT NO. 11  
(MOORING FACILITY)

The STATE OF HAWAII, by its DEPARTMENT OF LAND AND NATURAL RESOURCES, and MAKA KAI CHARTERS, INC., hereinafter referred to as the "PERMITTEE", hereby agree to incorporate the following provisions to MOORING REQUEST and AGREEMENT NO. M-3714.

- a. Pursuant to Section 13-232-43 of the Hawaii Administrative Rules, Part I, Small Boat Harbors, permission is given to the PERMITTEE to "construct"/use, at the PERMITTEE'S own risk and expense, a MOORING FACILITY (herein called facility) as shown in the sketch.
- b. Plans and specifications for the construction and the location of the facility shall be approved by the DEPARTMENT before commencement of construction.
- c. Upon completion, inspection and acceptance of any facility, such facility shall become the property of the STATE.
- d. The facility shall be kept in a safe and functional condition and the maintenance and repair shall be at expense of the PERMITTEE. If the facility is shared by two or more permittees, the maintenance and repair expenses shall be divided equally between the permittees. Any damage to STATE property caused by the installation of the facility will be the responsibility of the PERMITTEE. The PERMITTEE shall save and hold harmless the STATE OF HAWAII, its officers, employees, agents and representatives from any and all suits or actions of every nature and kind which may be brought for or on account of any bodily injury, death to persons or damage arising out of or otherwise attributed to the erection of the facility.
- e. Upon termination of the MOORING PERMIT by either party, the PERMITTEE shall remove the facility without damaging STATE property and restoring STATE property to its original condition. The DEPARTMENT reserves the right to charge the PERMITTEE a reasonable fee for such removal in the event the PERMITTEE fails to remove the facility after written notice by the DEPARTMENT.
- f. Paragraph 6 of the MOORING AGREEMENT is amended by inserting the words "or mooring facility" wherever appropriate.
- g. The PERMITTEE fully understands that the use of the facility after its completion is only a privilege extended to the PERMITTEE by the DEPARTMENT.

DATED: 10/15/08

PERMITTEE: James E. Coon  
MAKA KAI CHARTERS, INC.  
JAMES E. COON VICE PRESIDENT

STATE OF HAWAII, DEPARTMENT OF LAND  
AND NATURAL RESOURCES, DIVISION OF  
BOATING AND OCEAN RECREATION

Miles J.K. Lopes Sr.  
MILES J.K. LOPES SR., HARBOR AGENT II

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION

ADDENDUM TO MOORING REQUEST  
AND AGREEMENT NO. 12  
(GEAR LOCKER)


The STATE OF HAWAII, by its DEPARTMENT OF LAND AND NATURAL RESOURCES, and MAKA KAI CHARTERS, INC. hereinafter referred to as the "PERMITTEE", hereby agree to incorporate the following provisions to MOORING REQUEST and AGREEMENT NO. M-3714.

- a. Pursuant to Section 13-232-43 and 13-232-44 of the Hawaii Administrative Rules, Part I, Small Boat Harbors, permission is given to the PERMITTEE to "construct"/use, at the PERMITTEE'S own risk and expense, a GEAR LOCKER (herein called gear locker) as shown in the attached sketch.
- b. Plans and specification for the construction and the location of the gear locker shall be approved by the DEPARTMENT before commencement of construction.
- c. Upon completion of the gear locker, title and ownership shall remain with the PERMITTEE.
- d. The charge levied for the use of the gear locker, after its completion, shall be provided in the Hawaii Administrative Rules, Part I, Small Boat Harbors.
- e. The gear locker shall be kept in a respectable condition and the maintenance and repair shall be at expense of the PERMITTEE.
- f. Upon termination of the MOORING PERMIT by either party, the PERMITTEE shall remove the gear locker without damaging STATE property and restoring STATE property to its original condition. The DEPARTMENT reserves the right to charge the PERMITTEE a reasonable fee for such removal in the event the PERMITTEE fails to remove the gear locker after written notice by the DEPARTMENT.
- g. Paragraph 6 of the MOORING AGREEMENT is amended by inserting the words "or gear locker" wherever appropriate.
- h. The PERMITTEE fully understands that the use of the gear locker after its completion is only a privilege extended to the PERMITTEE by the DEPARTMENT.

DATED: 10/15/08

PERMITTEE:   
MAKA KAI CHARTERS, INC.  
JAMES E. COON, VICE PRESIDENT

STATE OF HAWAII, DEPARTMENT OF LAND  
AND NATURAL RESOURCES, DIVISION OF  
BOATING AND OCEAN RECREATION

  
MILES J.K. LOPES SR, HARBOR AGENT II

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF BOATING AND OCEAN RECREATION

ADDENDUM TO MOORING REQUEST  
AND AGREEMENT NO. 13  
(COMMERCIAL SIGN)

The STATE OF HAWAII, by its DEPARTMENT OF LAND AND NATURAL RESOURCES, and MAKA KAI CHARTERS, INC., hereinafter referred to as the "PERMITTEE", hereby agree to incorporate the following provisions to MOORING REQUEST and AGREEMENT NO. M-3714.

- a. Pursuant to Section 13-231-68 of the Hawaii Administrative Rules, Part I, Small Boat Harbors, permission is given to the PERMITTEE to "construct"/use, at the PERMITTEE'S own risk and expense, a COMMERCIAL SIGN (herein called sign) as shown in the attached sketch.
- b. Plans and specification for the construction and location of the sign shall be approved by the DEPARTMENT before commencement of construction.
- c. Upon completion of the sign, title and ownership shall remain with the PERMITTEE.
- d. The charge levied for the use of the sign, after its completion shall be provide in the Hawaii Administrative Rules, Part I, Small Boat Harbors.
- e. The sign shall be kept in a respectable condition and the maintenance and repair shall be at expense of the PERMITTEE.
- f. Upon termination of the MOORING PERMIT by either party, the PERMITTEE shall remove the sign without damaging STATE property and restoring STATE property to its original condition. The DEPARTMENT reserves the right to charge the PERMITTEE a reasonable fee for such removal in the event the PERMITTEE fails to remove the sign after written notice by the DEPARTMENT.
- g. Paragraph 6 of the MOORING AGREEMENT is amended by inserting the words "or sign" wherever appropriate.
- h. The PERMITTEE fully understands that the use of the sign after its completion is only a privilege extended to the PERMITTEE by the DEPARTMENT.

DATED: 10/15/88

PERMITTEE: James E. Coon  
MAKA KAI CHARTERS, INC.  
JAMES E. COON, VICE PRESIDENT

STATE OF HAWAII, DEPARTMENT OF LAND  
AND NATURAL RESOURCES, DIVISION OF  
BOATING AND OCEAN RECREATION

Miles J.K. Lopes Sr.  
MILES J.K. LOPES SR. HARBOR AGENT II



# Exhibit C



# U.S. COAST GUARD SUMMARY OF STATEMENT FORM

Witness Name: ROBERT DAKLEY (Please Print Clearly)

Street Address: [REDACTED]

City/State/Zip: [REDACTED]

Phone No: [REDACTED]

Position: U.S. COAST GUARD OFFICER

Employer Name: U.S. COAST GUARD

Employer Address: 95 LONO AVE STE 110

City/State/Zip: KAKULUI HI 96832

Phone No: (808) 873-3105

License/Doc. # [REDACTED]

ON 14 AUG 08 <sup>Approx 1100</sup> I VISITED THE LAHAINA WELDING SHOP AT MALA DRYDOCK (DRAKES). I WAS THERE TO LOOK AT THE VESSEL TRILOGY II RUDDERS WHICH WERE BEING REPAIRED. I SAW SEVERAL BROKEN OFF CHUNKS OF CORAL EMBEDDED INTO THE DAMAGED AREA OF THE PORT SIDE RUDDER. THERE WAS MORE DAMAGE TO THE PORT RUDDER THAN THE STARBOARD BUT BOTH BOTH RUDDERS HAD OBVIOUSLY BEEN ENVELOPED IN A GROUNDING.

(OPTIONAL): I, the undersigned, have read the above summary of my statement and verify that it is complete and accurate:

R.B. Oakley CU04 USCG  
SIGNATURE OF WITNESS

19 AUG 08  
DATE OF INTERVIEW

The above (and, if applicable, continuation page(s)) is an accurate and true summary of my interview with the above named witness.

SIGNATURE OF INVESTIGATOR

Page 1 of

DATE OF INTERVIEW



# Exhibit D



# Exhibit E

Department of Land and Natural Resources  
Division of Conservation and Resources Enforcement  
175 S. Puunene Avenue  
Kahului, Hawaii

FOLLOW UP BY EVIDENCE CUSTODIAN

State of Hawaii vs. Maka Kai Charters, Inc.

Evidence recovered by:

Officer: Hilbert Manlapao # 240

Date: 8/19/2008

Time: 1430 hours

Citation / Case #: MA 09-276

Items recovered:

- 1 2-Small corral pieces
- 2 \_\_\_\_\_
- 3 \_\_\_\_\_
- 4 \_\_\_\_\_
- 5 \_\_\_\_\_
- 6 \_\_\_\_\_
- 7 \_\_\_\_\_
- 8 \_\_\_\_\_
- 9 \_\_\_\_\_
- 10 \_\_\_\_\_
- 11 \_\_\_\_\_
- 12 \_\_\_\_\_
- 13 \_\_\_\_\_
- 14 \_\_\_\_\_
- 15 \_\_\_\_\_

Evidence Recovered by: Clarence YAMAMOTO # 10  
Evidence Custodian

Date Received: 8/19/2008

Time Received: 1630 hours

Evidence Secured Within: Evidence Room ☐ XXXXXX

DOCARE Freezer ☐

Gun Safe ☐

# Exhibit F

**Preliminary Assessment Report  
Trilogy II/Molokini Reef Damage  
8/14/08**

**Staff:**

John Mitchell – Survey  
Darla White – Survey  
Skippy Hau – Captain

Left Kihei Boat Ramp @ 8:15am arrived @ Molokini “Reefs End” by 8:38am.  
John and Darla entered water @ 8:45am near first visible land of crater on the outside (Western) portion of crater wall and swam north east along wall searching for damage. Two parallel scar lines sited approximately 100m north of land in approximately 1-1 1/2 meters of water.

Northernmost hull scarline is ~6.6m long with ~3/4 meter initial hull damage and ~2m lateral damage.

Southernmost hull scar line (approximately 7m from above) is ~6.4m long with ~3/4 meter initial hull damage and ~2m lateral damage. At the initial impact of this scar line it appears that the boat jumped to the north and the hull sat down leaving another 2.4m by 2m scar line.

Paint from hull is evident along both scar lines as well as fragments from the rudders (more rudder debris is noticeable at the westernmost regions of the impact).

We estimate that coral colonies damaged may range near 100 and include *Porites lobata*, *Pocillopora meandrina*, *P. ligulata*, *P. molokensis*, *P. verrucosa*, as well as *Zoanthid* sp. A total of 132 pictures were initially taken by John and Darla both with and without CSI meter stick and are saved on a CD. Transect lines were run to measure length and width of damage.

GPS waypoints for each end of damage:

N20°95406, W156°68690  
N20°92629, W156°69415  
N20°63456, W156°49818  
N20°63476, W156°49820

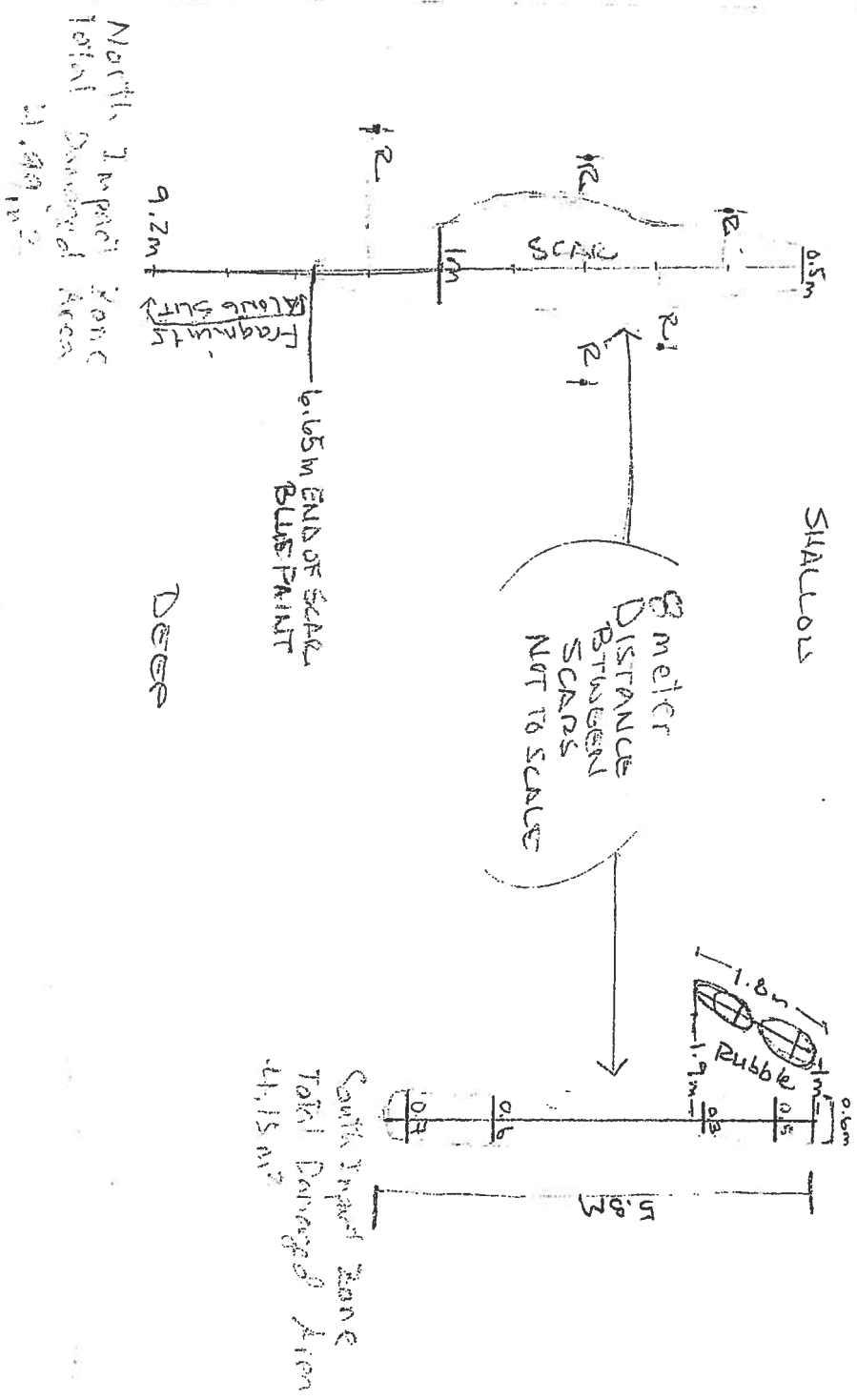
The current was moving westward at a strong kick (1-2+knots) so it was difficult to do a “Full” assessment, but we would rate the damage as substantial and recommend a full survey when conditions are better. This can easily be done snorkeling due to the shallow area of the impact zone.



$$m = 1m$$

PROCURNI RECOVERS END  
INSIDE  
drate

8/22/08



$$R = \text{Rubble}$$

Overall Total  
Directly Damaged  
Area =  $9.14 m^2$

Outside  
 $21.15$



# Exhibit G

**Trilogy II  
Molokini MLCD Grounding  
Habitat Damage Assessment  
August 2008**

**Field Investigation Report  
Preliminary Field Assessments: 8/14/2008 & 8/22/2008  
Full Ecological Assessment: 10/8/2008**

**Russell Sparks  
Division of Aquatic Resources, Maui Office**



**Photo showing some of the coral damaged by the Trilogy II grounding in water 3-5' deep at "Reef's End", on the western edge of Molokini Shoal MLCD. Blue paint from the vessel's hull is shown on the rocks, with bare white spots marking the location where corals were likely knocked off of the rock substrate.**

## **Case History**

On August 13, 2008 at approximately 7:55am, the vessel Trilogy II ran into the shallow reef on the western edge of the Molokini Shoal MLCD (the area commonly referred to as "Reef's End"). The vessel's Captain, Lawrence Lee, reported that he immediately put the vessel into neutral at which time it began to float freely over the shallow reef. He then requested assistance from the nearby vessel and was pulled into deeper water. Captain Lee secured the Trilogy II on a day-use mooring and inspected the vessel's hull. Damage was noted to both of the rudders and there was some water water seepage into a port side rear compartment. There was, however, no damage to the propellers or propulsion systems. Captain Lee reported the incident to the US Coast Guard and requested permission to transfer the passengers onto the vessel Mahana Na'ia. After all the passengers were transferred the Trilogy II safely returned to Ma'alaea Harbor.

The Maui Office of the Division of Aquatic Resources (DAR) was notified of the incident and conducted an initial site inspection on August 14, 2011. At this time, the exact coordinates were recorded and a rough estimate of the amount of reef damage was measured (Appendix 1). This inspection was conducted by Maui DAR Marine Monitoring staff (John Mitchell and Darla White). A subsequent preliminary inspection was conducted on August 22, 2008 using SCUBA gear during which time exact damage scar measurements were collected and a diagram of the damaged reef was created (Figure 1). Russell Sparks and Darla White conducted this follow-up inspection.

A full ecological assessment was conducted on October 8, 2008. The purpose of the ecological assessment was to carefully quantify the coral composition and density in the undamaged area surrounding the grounding impact scars. The survey also measured the full extent of coral damage within the impact scar. This damage assessment report will detail the findings of the DAR site inspections, the full ecological assessments, and provide estimates of the total coral damage.

## **Coral Damage Assessment**

The initial site inspections and the full ecological assessment were conducted with the following tools: two underwater metric measuring tapes, two black and white archaeological sticks divided into ten centimeter segments, several underwater data sheets, two cameras, and two GPS units mounted on surface dive floats. The damaged site was photographed with the archaeological stick for scale, and detailed length and width measurements were taken of the actual coral damage and of the overall dimensions of the impacted reef area. The ecological coral reef assessments were conducted on six control transects located on undamaged reef habitat near the impact scars and two transects located directly within the damaged reef (Figure 2).

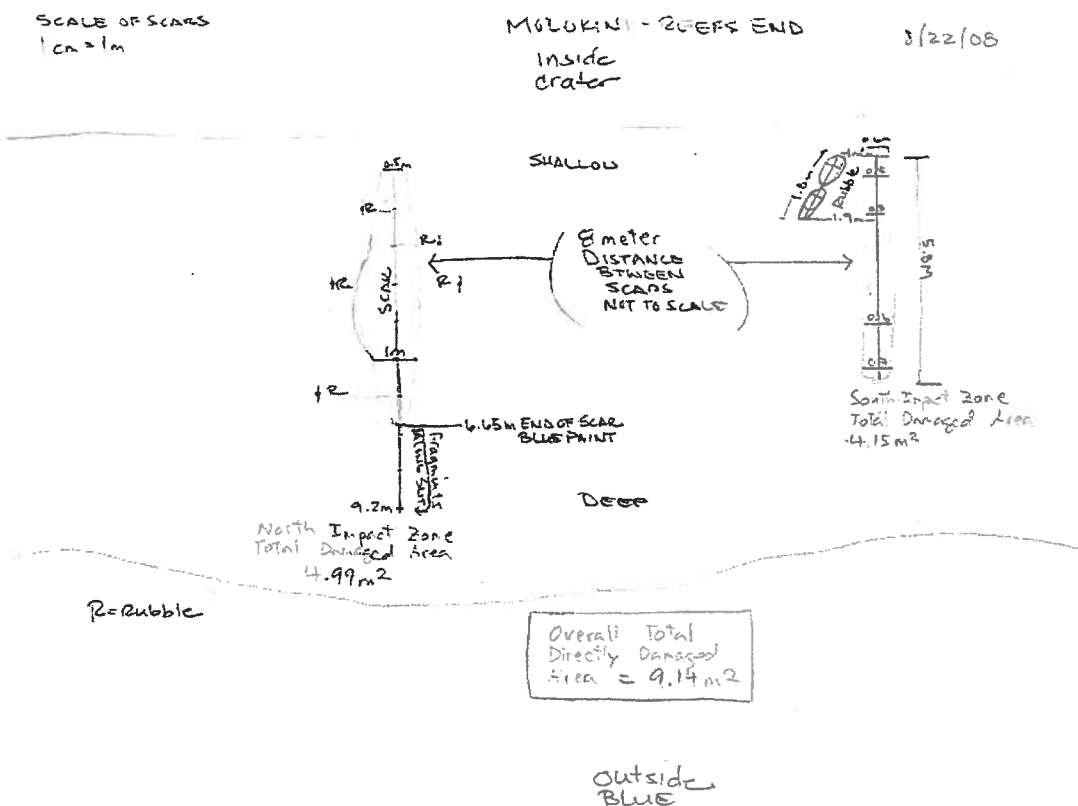
Overall coral reef ecosystem value was determined by using the following procedures: 1) total live coral cover was estimated for the surrounding undamaged reef; and 2) coral reef complexity was calculated by identifying and documenting all coral species, their approximate colony size and morphology. Estimated coral damage was calculated by

documenting the coral colony species composition, morphology and colony size within the undamaged reef, and comparing these findings to the damaged reef.

#### Pre-Assessments:

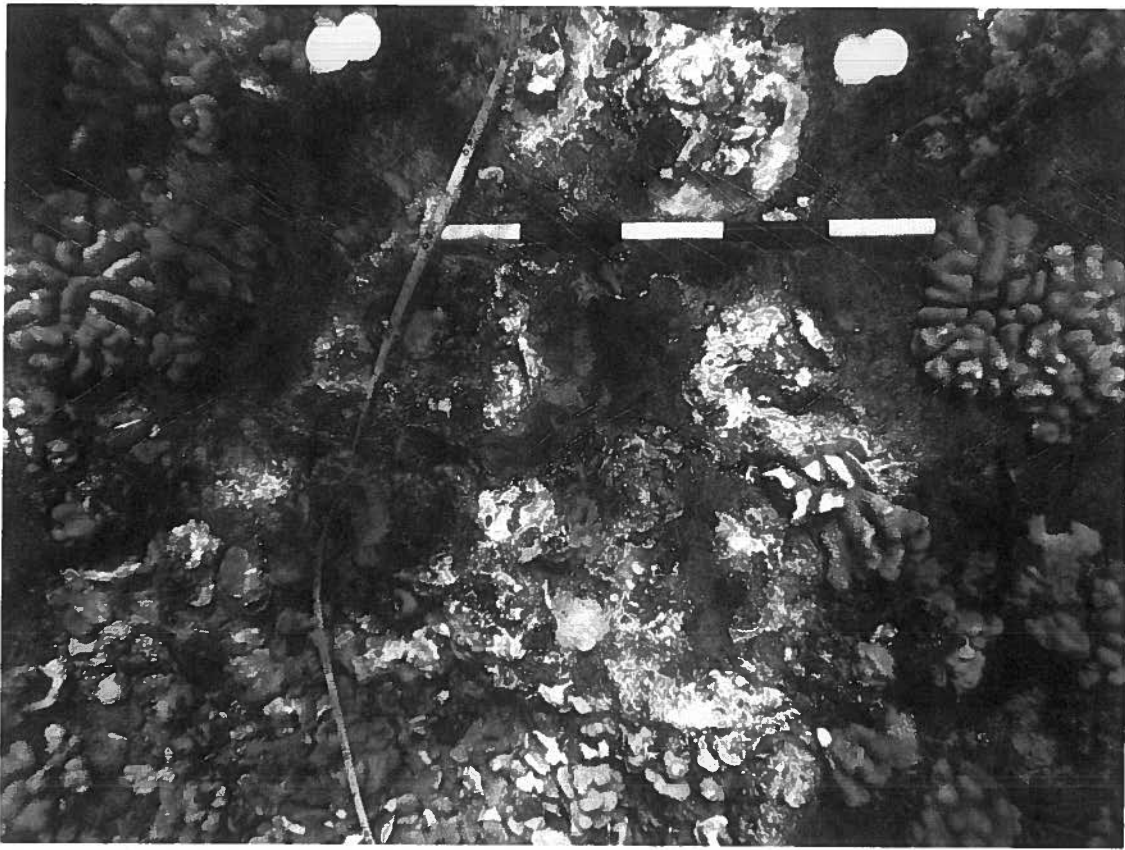
Immediately following the grounding events DAR Monitoring staff conducted a rapid assessment to clearly identify the damaged reef area, document an estimated amount of reef damage and record the damaged reef location with GPS coordinates. The results of this initial inspection are detailed in Appendix 1 "Preliminary Assessment Report, Trilogy II/Molokini Reef Damage, 8/14/2008".

On August 22, 2008, a detailed effort to photograph, measure, and document the damaged coral reef was undertaken. Figure 1 shows a diagram generated from this assessment. Two separate hull scars 8 meters apart were documented. The northern scar included the major damage extending 6.65 meters and an area of coral fragments and rubble for an additional 2.55 meters. At the widest point, this scar was slightly over 1 meter in width. The Southern damage scar extended for 5.8 meters and was 0.7 meters wide at its widest point. There was also another area 1.8 meters long that was located on the northeastern edge of the main damage scar. This additional damage scar likely occurred when the boat began to float free from the initial grounding. Careful measurements of all the directly damaged reef resulted in a total impacted area of 9.14 square meters. An photograph of a portion of the damage scar is shown in Figure 2.



**Figure 1: Map of the reef area damaged on the shallow reef on the western edge of Molokini MLCD. Total damaged reef was measured at 9.14 m².**





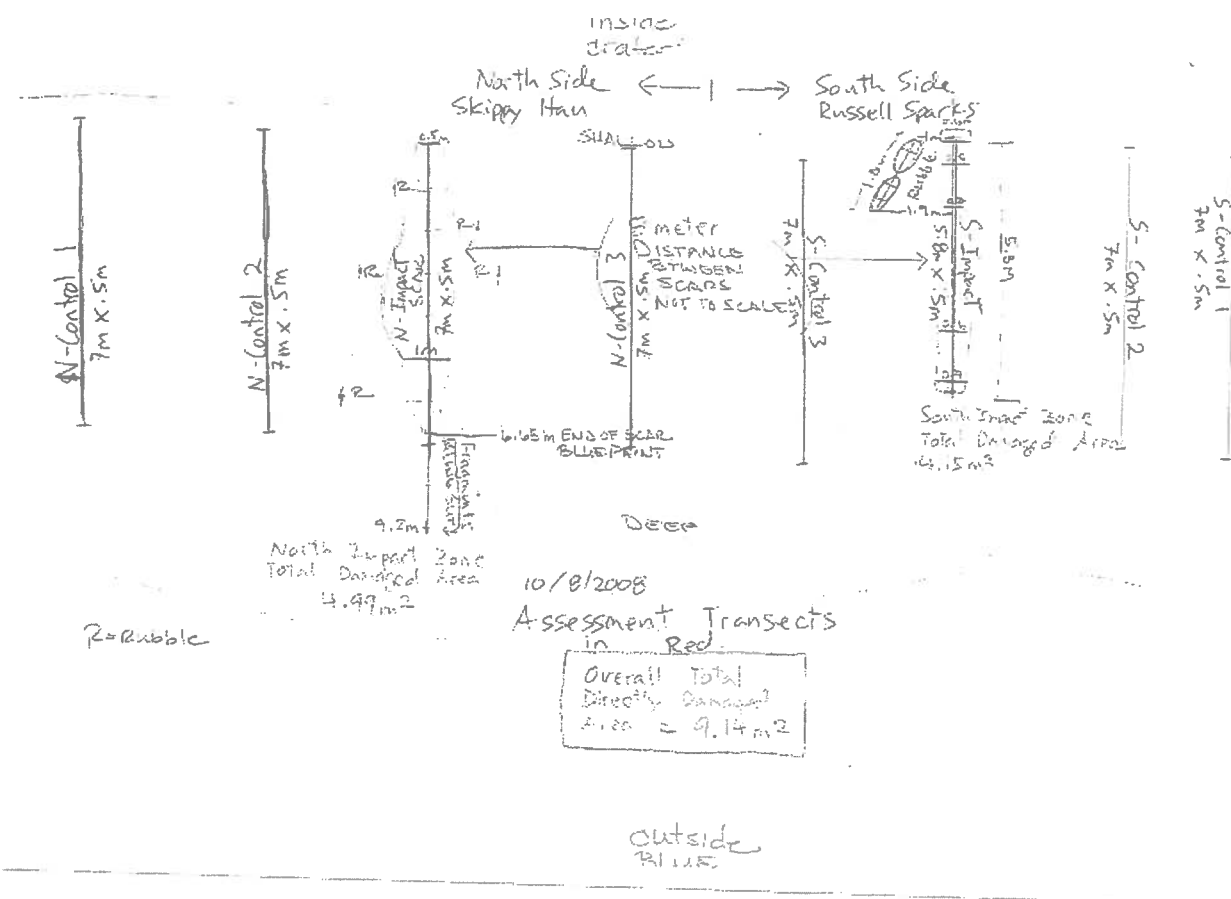
**Figure 2: Photograph showing a section of the damaged reef with a meter transect tape and the black and white archaeological stick for reference.**

Detailed Assessment:

On October 8, 2008, the DAR crew returned to conduct a full ecological reef assessment. This assessment looked at both the undisturbed reef surrounding the grounding scars and the damaged reef directly within the grounding scars. A total of eight transect surveys were conducted (6 controls on undisturbed reef, and 2 surveys directly within the impacted reef). Figure 3 shows the transect locations drawn over the damaged area diagram. For consistency with the size of the northern impacted area, all control transects were seven meters long by half a meter wide. The impacted area transects, however, were set up to be situated only on the damaged reef. Therefore, the north impact transect was also seven meters long by half a meter wide, but the south impact transect was 5.8 meters long by half a meter wide. The surveys included estimating the total living coral cover, and methodically counting, measuring, and identifying all the living coral colonies along each transect swath.

Overall the undisturbed reef within the six control transects was composed of mostly branching cauliflower coral (*Pocillopora meandrina*) and encrusting lobe coral (*Porites lobata*). Total living coral cover was estimated to be approximately 40%, with the remaining benthos composed of basalt rock covered with turf and coralline algae. Coral diversity and size complexity was fairly low, with 79% of the corals being classified as having low ecosystem value (<20cm in size or encrusting in morphology). The remaining 21% of the corals were classified as having medium ecosystem value (branching corals between 20cm and 80cm in size). No high ecosystem value corals (branching or lobe corals > 80cm in size) were identified in the general area that the

damage occurred. Five species of corals were documented within the area (*Pocillopora meandrina*, *Pocillopora eydouxi*, *Porites lobata*, *Montipora capitata*, and *Pavona varians*). Overall, the 40% coral cover and the moderate level of reef structure provide by the cauliflower corals led to a medium reef ecosystem value classification.



**Figure 3: Diagram showing the location of the ecological assessment transects. Shown are the eight transects conducted: three north undisturbed reef transects (N-Control 1–3), three south undisturbed reef transects (S-Control 1–3), and two within the damaged reef (N-Impact and S-Impact).**

The total number of coral colonies impacted by the Trilogy II grounding was estimated based on the results of the undisturbed reef assessment transects. Table 1 outlines the results of the coral colony counts for each of the six undisturbed reef and the two impacted area transects. The average coral colony density within the undisturbed reef was calculated at 38 corals/m<sup>2</sup>. Medium ecosystem value coral density was calculated at 8 corals/m<sup>2</sup>, while low ecosystem coral density was calculated at 30 corals/m<sup>2</sup>. A one-tailed 90% confidence interval was calculated on the total coral numbers, and then independently on each of the coral ecological value groups (medium, and low). This method of estimating coral damage accounts for natural variability and is conservative in favor of the responsible party. In addition it is the standard approach used by DAR when

investigating coral damage cases where the actual number of damaged corals cannot be directly documented. Based on the 90% confidence level, and by calculating the number of coral colonies per unit area ( $m^2$ ), we were able to estimate the total number of coral colonies that should have been living within the damaged reef area at approximately 316. The damage to the reef was not complete, however, with some corals still found undamaged within the damaged reef transects. The total amount of living coral colonies identified within both the north and south impact scars was 195. Therefore, the estimated amount of coral damage was calculated at 121 (living corals (195) subtracted from the estimated total corals (316)). The same statistical analysis and total damaged coral calculations were also conducted for each coral ecological group categories resulting in estimated damages of around 43 medium value corals, and 51 low value corals.

**Table 1: Results of the eight coral ecological assessment transects. Control transects were conducted on undisturbed reef on either side of the impacted reef. One transect was conducted on each of the two impacted reef areas. Estimated total coral damage was 121 colonies, but analysis within each ecological classification found approximately 43 medium value corals and 51 low value corals were damaged.**

Transect Number	Area meters	Medium Value Coral		Low Value Coral			Total	
		Branching	Corals/ $m^2$	Crustose	<20cm	total	Corals/ $m^2$	Corals/ $m^2$
N-Control-1	3.5	20	5.71	58	67	125	35.71	145
N-Control-2	3.5	17	4.86	42	62	104	29.71	121
N-Control-3	3.5	20	5.71	64	88	152	43.43	172
S-Control-1	3.5	43	12.29	27	45	72	20.57	115
S-Control-2	3.5	40	11.43	38	32	70	20.00	110
S-Control-3	3.5	33	9.43	35	67	102	29.14	135
N-Impact	3.5	5	1.43	33	80	113	32.29	118
S-Impact	2.9	12	4.14	28	37	65	22.41	77
Average Control Coral Density			8				30	38
Control Density St. Dev.			3.23				8.97	6.60
Total Impacted Area ( $m^2$ )	9.14							
90% Lower Confidence Limit			6.55				25.07	34.55
Estimated Corals Within the Impact Area			60				229	316
Corals Remaining in Impact Area			17				178	195
Total Damaged coral			43				51	121

## Summary

The grounding of the vessel Trilogy II that occurred on August 13, 2008, resulted in the damage of 9.14 square meters of medium ecosystem value coral reef habitat. This reef habitat was located on a shallow water basalt bench in between 3 to 5 feet of water depth and was composed of mostly low ecosystem value coral species. As a result of this analysis, we estimate that 121 coral colonies were damaged. By looking at coral species, morphology and sizes, we were able to estimate that 43 medium ecosystem value colonies and 51 low ecosystem value colonies were damaged and/or killed by this grounding event. The majority of these impacted coral colonies were either cauliflower coral (*Pocillopora meandrina*) or some form of low-lying encrusting coral (*Porites lobata*, *Montipora capitata*, and *Pavona varians*). The impacted reef habitat is within a shallow high wave energy area, and it is likely that given these circumstances the damaged coral colonies should recover fairly quickly and there should be little long-term negative impacts from this event.

## Appendix 1:

### Preliminary Assessment Report Trilogy II/Molokini Reef Damage 8/14/08

#### Staff:

John Mitchell – Survey  
Darla White – Survey  
Skippy Hau – Captain

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The current was moving westward at a strong kick (1-2+knots) so it was difficult to do a “Pull” assessment, but we would rate the damage as substantial and recommend a full survey when conditions are better. This can easily be done snorkeling due to the shallow area of the impact zone.

# Exhibit H

LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

KEN C. KAWAHARA  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

MARINE LIFE CONSERVATION DISTRICT USE PERMIT FOR:  
COMMERCIAL ACTIVITIES IN THE MOLOKINI SHOAL  
MARINE LIFE CONSERVATION DISTRICT

The Board of Land and Natural Resources hereby grants permission under the authority of Title 13, Chapter 31, Section 5, Hawaii Administrative Rules (HAR), and all other applicable laws, to:

NAME Maka Kai Charters, Inc.

MAILING ADDRESS 180 Lahainaluna Rd., Lahaina, HI 96761

PHONE NO. 808-661-4743 x209

PROPOSED ACTIVITIES:

Snorkeling Charters

VESSEL NAME, AND HA. NO. OR VESSEL DOCUMENT NO.

Trilogy II 908-806

PERMIT NUMBER: 022

for the following purpose:

This permit allows commercial activities (not including the taking of marine life) within the Molokini Shoal Marine Life Conservation District (MLCD) under the terms and conditions listed below:

1. The permittee shall comply with all applicable provisions of the Department of Land and Natural Resources HAR, Chapter 13-31, and other applicable laws not exempted by this permit.
2. Discretion shall be used to avoid conflict with divers, swimmers and others while conducting commercial activities.
3. This permit does not authorize the primary permittee or any designated assistant to engage in any other activity that violates any other State, Federal or County law, regulation or ordinance.
4. The permittee shall be responsible and accountable for all actions under this permit.
5. This permit shall be in effect for a two year period, and for a non-refundable \$50.00 fee, from 12/16/07 to 12/15/09 for the activities as specified.
6. Prior to its expiration, the permittee shall apply for reissuance of this permit; failure to do so will result in the automatic expiration of the permit at the end of its term. The permittee must return this permit by United States mail or by hand delivery to the Division of Aquatic Resources, 1151



Punchbowl St. Room 330, Honolulu, Hawaii, 96813.

7. This permit shall be incorporated as an addendum to the commercial vessel use permit for the use of state boating facilities issued in accordance with HAR section 13-231-57, or a commercial vessel registration issued in accordance with HAR section 13-256-4.
8. This permit shall be non-transferable, except as provided by HAR Section 13-231-62.
9. The board may revoke any permit for any infraction of the terms and conditions of this permit, and a person whose permit is revoked shall not be eligible to renew a permit until the expiration of one year from the date of revocation.
10. This permit does not in any way make the Board of Land and Natural Resources of the State of Hawaii or its employees liable for any claims of personal injury or property damage which may occur while the permittees are engaged in activities authorized under this permit; further, the permittees agree to hold the State harmless against any claims of personal injury, death, property damage, or business loss resulting from their activities.

I certify that I understand the conditions of this Permit and the Penalty of Chapter 13-31, Hawaii Administrative Rules which is attached hereto for reference.

APPLICANT:

Signature: 

Print: James E. Coon

DESIGNATED ASSISTANTS:


Signature: 

Print: Debbie Mitchell

Signature: \_\_\_\_\_

Print: \_\_\_\_\_

APPROVED:

  
LAURA H. THIELEN, Chairperson  
Board of Land and Natural Resources

cc: DOCARE  
DOBOR  
DAR-Maui